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December 23, 2020

VIA UPS OVERNIGHT MAIL
AND EMAIL: *cwalden@cityofatlanticcity.org*
Mr. Clinton Walden
Atlantic City Planning and Development Department
Suite 508 – City Hall
Atlantic City, New Jersey 08401

Re: Application for Certificate of Land Use Compliance
Hansen House, LLC
16 S. Tallahassee Avenue a/k/a Block 210, Lot 3
Atlantic City, New Jersey
Our File No. 5943-15

Dear Mr. Walden:

Please be advised that this firm represents Hansen House, LLC (the "Applicant") in connection with this application for a Certificate of Land Use Compliance ("CLUC"). We are filing this application in your capacity as zoning officer under protest and reserving all rights pursuant to a decision reached by Judge Noel L. Hillman in Federal District Court concerning the matter described below. A copy of Judge Hillman's decision dated December 3, 2020 is provided herewith.

The Applicant seeks a CLUC in connection with the operation of the above property as a single-family residence for disabled individuals in recovery from alcohol and substance abuse living together as a single housekeeping unit. The Applicant maintains that the use in question is a single-family residence. See correspondence from the Department of Community Affairs confirming that a Community Sober Living Residence (CSLR) is a single-family home. Attached is the Class F license for the CSLR at this location. Atlantic City has historically designated such a use as a "community residence" under § 152-1 of the Municipal Ordinance. Consistent with this previous determination by the City, the Applicant now seeks a CLUC to continue the use of the property as a "community residence." See prior denial of Zoning Permit dated July 19, 2020 which classifies this use as a community residence.

As referenced, an application for a CLUC was previously submitted by the Applicant on or about July 17, 2019. On July 19, 2019, the CLUC was denied by the City of Atlantic City as it was determined that the "facility is located within 660 linear feet of another facility that will house persons with disabilities." Specifically, § 152-1F of the City Ordinance prohibits a community residence within 660 linear feet of another. The CLUC was denied based solely and

exclusively upon this distance limitation. A copy of the July 17, 2019 application and July 19, 2019 denial is attached hereto.

The City's determination that the property is currently operating as a community residence under § 152-1 was echoed in the July 18, 2019 letter from Director Dale L. Finch. Mr. Finch indicated that the property is "currently occupied and used as a residential group/ community residence". The City determined that as a community residence, the use was in violation of § 152-1.F of the Ordinance as it was within 660 linear feet of an existing community residence. A copy of the July 18, 2019 letter from Director Dale L. Finch is attached hereto. The City did not find, however, that community residences were prohibited when the distance limitation was satisfied.

Following the denial of the initial CLUC application, the Applicant took part in multiple meetings and discussions with City officials concerning the use of the property as a single-family residence for disabled individuals. As a result of these meetings and discussions, the Applicant ultimately filed a complaint in federal court challenging, among other things, the validity of 660-foot distance limitation contained in the municipal ordinance. A copy of the Verified Complaint in the matter of The Hansen Foundation, Inc. v. City of Atlantic City, No. 1:19-CV-18608-NLH-AMD is attached hereto.

In response to the Applicant's arguments as to the illegality of the 660-foot distance limitation, the court found the distance restriction contained in § 152-1.F to be "explicitly discriminatory" (emphasis added). As no justification was presented to defend the disparate treatment of individuals with disabilities, the court went on to issue injunctive relief, permanently enjoining the City of Atlantic City from enforcing the distance requirement of City Code § 152-1.F.

The sole reason for the City's denial of the Applicant's previous CLUC application has been found to be discriminatory by a Federal District Court Judge and is thus stricken and of no further legal force or effect. Accordingly, the Applicant submits a new CLUC application to establish the subject use as a community residence consistent with the City's previous designation of the property. In support of this application, enclosed herein please find the following:

1. An original and one (1) copy of the Certificate of Land Use Compliance Application Form;

2. Two (2) copies of the July 17, 2019 Application and July 19, 2019 Denial;

3. Two (2) copies of the July 18, 2019 letter from Director Dale L. Finch;

4. Two (2) copies of the Verified Complaint in the matter of The Hansen Foundation, Inc. v. City of Atlantic City, No. 1:19-CV-18608-NLH-AMD; and

5. Two (2) copies of the Opinion of Judge Noel L. Hillman, U.S.D.J in the matter of The Hansen Foundation, Inc. v. City of Atlantic City, No. 1:19-CV-18608-NLH-AMD

Lastly, enclosed herein please find one check in the amount of $25.00 dollars representing the required application fee.

Please do not hesitate to contact me should you require any additional documents or information in order to consider this application.

All rights are reserved and Applicant does not waive any rights it may have pursuant to law as a result of this submission.

Thank you, as always, for your kind attention and usual courtesies.

Very truly yours,

NEHMAD DAVIS & GOLDSTEIN, P.C.

By: _____
KEITH A. DAVIS
kdavis@ndglegal.com

KAD/MJL/ch
Enclosures
c. Barbara Woolley-Dillon, Director (Via E-mail: *Bwoolley-dillon@cityofatlanticcity.org*) w/encls.
Ms. Jennifer M. Hansen (Via E-mail: *jmhansen@olehansen.com*) w/encls.
Steven G. Polin, Esquire (Via E-mail: *spolin2@earthlink.net*) w/encls.
Christopher S. D'Esposito, Esquire (Via E-mail: *cdesposito@ndglegal.com*) w/encls.
Michael J. Lario, Esquire (Via E-mail: *mlario@ndglegal.com*) w/encls.

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 804
TRENTON, NJ 08625-0804

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

October 31, 2019

Via Electronic Mail
Ms. Jennifer Hansen
Hansen House, LLC
4 E. Jimmie Leeds Road – Suite 3
Galloway, New Jersey 08205

Re: Licensed Class F Rooming House expressly for Cooperative Sober Living Residence
16 S. Tallahassee Ave
Atlantic City, New Jersey
Control No: 0102-0298

Dear Mr. Schier,

On December 20, 2017, following the completion of the regulatory process, the Department of Community Affairs (DCA) adopted an amendment to the Regulations Governing Rooming and Boarding Houses (N.J.A.C. 5:27-1 et seq) and the Uniform Construction Code (N.J.A.C. 5:23-1 et seq) to create a "Class F" rooming house license as a Cooperative Sober Living Residence (CSLR). Beginning in January 2018, the Bureau of Rooming and Boarding House Standards began accepting applications from individuals and entities seeking to obtain License to Own/Operate a CSLR.

The Rooming and Boarding House Act of 1979 (N.J.S.A. 55:13b-1et seq.) requires that before owning/operating a rooming/boarding house in the State, a person or entity shall apply for and obtain a License to Own/Operate a rooming/boarding house issued by the Department of Community Affairs, Bureau of Rooming and Boarding House Standards. The Department of Community Affairs is the regulatory agency designated to enforce the Act and the corresponding regulations regarding the licensure and inspection requirements of rooming/boarding houses.

A CSLR is designated as a single-family home, which is a Group R-3 or Group R-5 occupancy (N.J.A.C. 6.31(q)); therefore, a new Certificate of Occupancy is not required.

A CSLR is licensed to provide a home in which up to ten (10) individuals, exclusive of the owner, licensed operator and bona fide employees, who are recovering from drug or alcohol addiction can live together and support each other during their recovery. Residents of a CSLR become familiar with each other and depend on one another as part of a single housekeeping unit. Residents of a CSLR often share a bedroom with another resident and complete tasks related to maintenance and housekeeping within the facility. CSLR residents are supervised, including 24/7 awake and alert staffing in most of the facilities DCA has licensed to date. CSLR operators often

conduct random drug or alcohol tests to ensure residents stay the course of substance abuse recovery.

A Class A Rooming House licensed to allow occupancy of up to ten (10) residents do not operate as a single housekeeping unit. Pursuant to the Uniform Construction Code, this use constitutes a change of use to a Group R-2 occupancy. The change of use to a more restrictive Group requires additional life safety protections, including suppression and interconnected hard wired smoke/carbon monoxide alarms. In most cases, the residents of Class A Rooming Houses do not know each other. The residents each live in a single occupancy room with a lockable door. They communicate with other residents while passing each other in the common areas or entering and exiting the dwelling. Residents of Class A Rooming Houses are not required to complete housekeeping or maintenance tasks within the facility and they are not supervised. The typical rooming house has a licensed operator residing on site, but there is no requirement for the licensed operator to remain on site at all times.

Furthermore, pursuant to N.J.A.C. 5:23-3.11(k) of the Uniform Construction Code, DCA is the sole enforcing agency for a CSLR. Therefore, construction work undertaken in the dwelling is submitted to the Office of Local Code Enforcement in the Department of Community Affairs for plan review, permit issuance, and inspection.

Once an application for a CSLR license has been deemed complete, the Bureau of Rooming and Boarding House Standards refers the property to the Office of Regulatory Affairs (ORA) and the appropriate Office of Local Code Enforcement (OLCE). ORA visits the municipality and takes the code enforcement file. The OLCE schedules an inspection of the premises to confirm compliance with the Uniform Construction Code (N.J.A.C. 5:23-6.31(q)).

Upon verification that there are no visible code violations, the OLCE issues a Certificate of Approval (CA) to the Owner in Fee. After the Bureau receives a copy of the CA from the Owner in Fee, the Bureau of Rooming and Boarding House Standards issues a License to Own/Operate to the parties. From this point on, at least annually with some unannounced spot checks, the Bureau of Rooming and Boarding House Standards conducts evaluations to confirm that the CSLR maintains compliance with the habitability and occupancy code standards in the Regulations Governing Rooming and Boarding Houses. The License to Own/Operate must be renewed annually.

If you or your staff have any questions or concerns, please feel free to contact DCA at: Department of Community Affairs, Bureau of Rooming and Boarding House Standards, 101 S. Broad Street, P.O. Box 804, Trenton, New Jersey 08625-0804 or by telephone at (609) 633-6251.

Very Truly Yours,

Bernard A. Raywood, Chief
Bureau of Rooming and
Boarding House Standards
NJ Department of Community Affairs

HANSEN HOUSE LLC
4 E. JIMMIE LEEDS ROAD, SUITE 3
GALLOWAY NJ 08205

STATE OF NEW JERSEY DEPARTMENT
COF COMMUNITY AFFAIRS DIVISION OF
CODES AND STANDARDS

LICENSE: TO OWN

ISSUED TO: HANSEN HOUSE LLC

FACILITY TYPE:
COOPERATIVE SOBER LIVING RESIDENCE

FACILITY ADDRESS:
16 S. TALLAHASSEE AVE.
ATLANTIC CITY, NJ

LICENSE CAPACITY: 10

FACILITY#: 0102-0298

LICENSE ISSUED: NOVEMBER 12, 2019

EXPIRATION DATE: OCTOBER 31, 2020

This license is issued pursuant and subject to P.L. 1979, c. 496; N.J.S.A. 55:13B-1 et seq. and is valid only for the person or organization it is issued to and only to own and/or operate the facility indicated herein.

This license is also subject to suspension or revocation, after opportunity for a hearing, in the event of non-compliance with applicable licensing requirements. Issuance of a renewal license is for the purpose of allowing continued operation and is not evidence of any determination that the facility is currently in compliance with applicable state regulations.

Bernard Raywood
Bureau of Rooming and Boarding House Standards

City of Atlantic City
Department of Planning & Development

Suite 606 City Hall
Atlantic City, New Jersey 08401-4603
TEL 609.347.6404
FAX 609.347.6345
eterenik@cityofatlanticcity.org

Elizabeth A. Terenik, PP, AICP
Director

CERTIFICATE OF LAND USE COMPLIANCE

Fee: Commercial $50.00 Residential: $25.00
Checks or Money Order Payable To The City of Atlantic City

Applicant's Name: Hansen House, LLC Phone: 609-965-3700

Applicant's Address: 4 Jimmie Leeds Rd., Suite 3, Galloway, NJ 08205

E-mail Address: dgoddard@olehansen.com

Owner's Name: Same as Applicant Phone: Same as above

Owner's Address: Same as Applicant

Owner's Signed Consent: _____ Date: _____

Name and Address of Professional Consultant(s): None

Street Address of Subject Property: 16 S. Tallahassee Avenue

Zoning District: R-2 Block(s) 210 Lot(s) 3

Present Use (Include total number of units, describe fully): Single family home, 7 bedrooms

This Application is For (fully describe proposed use and/or signage, including total number of units):

This will be a 7 bedroom home with 14 residents. See attached letter from Keith Davis on 7/10/19 to Anthony Cox.

Notice:1) THIS CERTIFICATION MAY NOT BE THE ONLY APPROVAL REQUIRED NOR DOES IT SUBSTITUTE FOR A CERTIFICATE OF NON-CONFORMITY, BUILDING PERMIT, PERMITS REQUIRED IN FLOOD HAZARD AREAS, MERCANTILE LICENSE OR OTHER STATE AND LOCAL PERMITS. 2) THE OWNER, BY HIS "SIGNED CONSENT" ABOVE, ALSO AUTHORIZES THE RELEASE OF THE PROPERTY RECORD CARDS AND ANY OTHER DOCUMENTS TO THE APPLICANT.

FOR OFFICE USE ONLY

Approved _____ Denied _____

Conditions of Approval: _____

Application Number: _____ Fee Received: _____

Date Filed: _____ Date Issued: _____

Authorization: _____
Elizabeth Terenik, P.P., Planning Director/ Land Use Administrator

Distribution:
- Construction Division ____
- Code Enforcement ____
- Mercantile Office ____
- VIP Program ____
- Police Department ____
- City Engineer ____
- Fire Department ____
- Tax Assessor ____
- Health Department ____
- Other ____

REV: 1/8/15

Nehmad Perillo Davis & Goldstein

Nehmad Perillo Davis & Goldstein, PC
Counselors at Law
www.npdlaw.com

Keith A. Davis
Partner

kdavis@npdlaw.com

4030 Ocean Heights Avenue
Egg Harbor Township, NJ 08234

t 609 927 1177
f 609 926 9721

July 10, 2019

Via Email: acox@cityofatlanticcity.org
and Via Overnight Mail
Anthony Cox, Building Subcode Official
City of Atlantic City
Atlantic City Construction Department
City Hall – 1333 Atlantic Avenue
Atlantic City, NJ 08401

RE: 16 S. Tallahassee Avenue
Atlantic City, New Jersey
Our File No. 5943-10

Dear Mr. Cox:

Our firm represents Hansen House, LLC, which is the owner of the above-referenced 7-bedroom single-family home.

Our client has advised us that certain issues have been raised by your office concerning the nature of the use of this single-family home and whether it constitutes a permitted use in the R-2 Zoning District. For the reasons expressed below, the home will be used as a single-family residence. The occupants in the single-family residence are those recovering from substance abuse. However, that does not render the use to be anything other than a single-family residence for the reasons and legal authorities set forth below:

I. Alcoholism and Drug Addiction Are Lifetime Diseases

As you may be aware, alcoholism and drug addiction are lifetime diseases. They are chronic, progressive and sometimes fatal. Avoiding relapse and progressing in recovery are therefore the most important aspects of a recovering addict's life. Jeffrey O. v. City of Boca Raton, 511 F. Supp. 2d 1339, 1346-47 (S.D. Fla. 2007) (group home residents who were recovering alcoholics or drug addicts held to be disabled under the Fair Housing Act). See also, City of Edmonds v. Washington State Building Code Council, 514 U.S. 725 (1995); Sullivan v. City of Pittsburgh, 811 F.2d 171, 182 (3d Cir.1987) ("Case law establishes that alcoholics are handicapped within the meaning of [the Rehabilitation Act].") Legislative history also supports this conclusion. *See* H. R. Rep. No. 101- 485(11), at 51 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 333

(noting that "physical or mental impairment" includes "drug addiction and alcoholism") (internal punctuation omitted).

II. Recovering People Are Considered Disabled and Entitled to the Protections of the FHA and ADA.

In 1988, Congress amended the Fair Housing Act ("FHA") to include people with disabilities as a protected class, including people in recovery from alcohol or drug abuse. 42 U.S.C. §3601, et. seq. The FHA is a "clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream." H.R. Rep. No. 711, 100th Cong. 2d Sess. 18, reprinted in 1988 U.S.C.C.A.N. 2173, 2179 (hereinafter "House Report"). Furthermore, this law "is intended to prohibit the application of special requirements through land-use regulations ...that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community." House Report at 2185.

To accomplish these objectives, Congress provided that discrimination covered by the Act includes, among other practices:

> a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped persons] equal opportunity to live and enjoy a dwelling.

See 42 U.S.C. §3604(f)(3)(B) quoted in City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995). As Congress explained, this provision means that certain practices are no longer defensible simply because that is how business has always been conducted:

> A discriminatory rule, policy, practice or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.

House Report at 2186.

The Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, et. seq., was enacted in 1990 as a comprehensive Congressional mandate to eliminate discrimination against people with disabilities. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. In addition, regulations promulgated under Title II require that public entities "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. §35.130(d). Like the FHA's reasonable accommodation mandate, the ADA regulations also require that public entities "make

reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless [it] can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity." 28 C. F. R. §35.130(b)(7).

Under the ADA and FHA, local governments are explicitly prohibited from administering zoning procedures in a manner that subjects persons with disabilities to discrimination on the basis of their disability. Innovative Health Systems, Inc. v. City of White Plains, 117 F. 3d 37 (2nd Cir. 1997); 42 U.S.C. § 3615 ("any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid [under the Fair Housing Act]"). In addition, the ADA and FHA also require such entities to make reasonable accommodations for people with disabilities. 42 U.S.C. §12131(2); 42 U.S.C. § 3604(f)(3)(B).[1]

People with disabilities, or their treatment providers, may bring three general types of claims under the ADA and FHA: (1) intentional discrimination claims (also called disparate treatment claims); (2) disparate impact claims; and (3) claims that a defendant refused to make "reasonable accommodations." Oxford House - Evergreen v. City of Plainfield, 769 F. Supp. 1329 (D. N.J. 1991).

Any decision by the Atlantic City Construction Office refusing to issue a certificate of occupancy as a reasonable accommodation would constitute unlawful discrimination under the ADA and FHA thereby subjecting it to significant liability and exposure to considerable damages and attorneys' fees and costs. See Jeffrey O., 511 F. Supp. 2d at 1346-47 (S.D. Fla. 2007) (defense firm paid in excess of $500,000.00 for unsuccessful defense; plaintiffs' counsel awarded in excess of $600,000.00); Tracey P., et al. v. Sarasota County, et al., Case No. 8:05-CV-927-T-27EAJ (M.D. Fla.) (County paid outside defense firm $3.2 million for unsuccessful defense; plaintiffs' counsel paid in excess of $600,000.00).

III. People in Recovery Need Recovery Residences.

For recovering alcoholics and addicts, finding and staying in a healthy, functional environment that provides mutual support and monitoring, surrounded by people who are not using alcohol or drugs, and away from people and situations that previously triggered or supported substance use are essential elements to avoiding relapse. Further, sharing a common household with

[1] *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 782 (7th Cir. 2002) ("The requirements for reasonable accommodation under the ADA are the same as those under the FHA"); *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 731 (9th Cir.1999) (noting that Congress has instructed that both acts are to be interpreted consistently). Generally the same principles governing interpretation of the ADA apply to the FHA and vice versa.

other recovering persons and functioning as a family household is an integral part of the recovery process.

Research shows that persons recovering from addiction are far more often successful when living in a household with several other persons in recovery, particularly in the early stages of recovery. Barring or otherwise limiting the number of unrelated individuals from residing together, without regard to the size of the residential/healthcare unit, interferes with the critical mass of individuals supporting each other in recovery. Further, it increases the chances that a person in recovery will be alone by him or herself.

Recognized government studies suggest that as many as fifteen (15) million Americans suffer from alcohol or drug dependency, a number that speaks in no uncertain terms to the importance of successful sober living programs in shaping the future of the country and those who live here. Although there is not an exact accurate count of the number of sober living homes or available beds in the United States, the estimated total number of beds is likely around 60,000. Not surprisingly, the demand for treatment services far exceeds the supply, and waiting lists are long. This is only exacerbated by those returning from military service abroad, many of whom have found themselves addicted to substances to mitigate their pain.

Due to the cost constraints implemented by managed health care, the median length of stay for drug and alcohol inpatient residential primary treatment, (where patients live and receive treatment) has decreased from 42 days in 1995, to 28 days in 2000 and to 20 days in 2004 (Office of Applied studies for the Substance Abuse & Mental Health Services Administration (SAMHSA), United Stated States Department of Health and Human Services). As a result of this reduction of primary treatment, patients are increasingly referred to sober living homes to continue their program of recovery. Consequently, the demand for well run and legitimate sober living environments has and will continue to dramatically increase. Since residents are coming to these sober living environments earlier in their recovery, they tend to stay for longer periods of time, which results in fewer beds opening up to future residents.

Drug treatment does not end the day a patient leaves a treatment facility. Successful rehabilitation is and must be always be an ongoing process, driven by patients who must develop the self-control necessary to stay sober over the long haul. Drug and alcohol addiction can only be cured by virtue of qualified sober living programs the current demand for which continues to climb.

Statistics show that persons suffering from the disease of addiction/alcoholism have a higher success rate of achieving long lasting sobriety when given the opportunity to build a stronger foundation; living in a supportive/sober environment once completing treatment and/or attending 12-step meetings. When an addict/alcoholic is given the opportunity to live in a supportive setting and is afforded the opportunity to become invested in their recovery process, the chances of relapse are reduced.

As individuals in recovery from alcoholism and substance abuse, present and prospective residents of this residence seek to live in a family-type environment which would provide them with emotional and therapeutic support during the recovery process. The residents are individuals who cannot live independently without the fear or threat of relapse into active alcoholism and substance abuse. By living together as the "functional equivalent of a traditional family" and by living with other persons who are in recovery, the residents of the sober living residence never have to face an alcoholic's or addict's deadliest enemy – loneliness.

IV. The City Has a Duty to Grant Hansen House, LLC and Its Residents a Reasonable Accommodation.

Even if the City determined that the use in question is not permitted in the R-2 Zoning District – a position we strongly disagree with – the City has an obligation and affirmative duty to waive or modify any zoning restrictions as a "reasonable accommodation" under the FHA or Title II of the ADA. See generally, Smith-Berth v. Baltimore County, 68 F.Supp. 2d 602, 621 (D.Md. 1999); 28 C.F.R. § 35.130(b)(7).

The Maryland Court of Appeals has specifically imposed this affirmative duty on zoning officials in Maryland, who are empowered and specifically directed to consider and provide accommodations under the ADA: "Everybody involved with public matters [must] make reasonable accommodations to the disabled." Mastandrea v. North, 361 Md. 107, 119 n. 11 (2000) (emphasis added) (approving county board's decision to set aside local zoning requirements to accommodate a disabled individual's needs and agreeing that public officials have a duty to consider accommodations when requested).

Accommodations or modifications required by the ADA are wide-ranging. Accommodations can include, but are not limited to, relaxing or not enforcing a zoning rule, waiving a policy, construing a provision in the code favorable to the applicant, treating a use as permissible, and making other types of exceptions. See, e.g., Hovsons, Inc. v. Township of Brick, 89 F.3d 1096, 1104 and 1106 n. 5 (3d Cir. 1996) (accommodation was not to enforce a zoning rule that would have excluded a nursing home from a residential zone); Horizon House Developmental Svcs. v. Upper Southampton, 804 F.Supp. 683, 699 (E.D. Pa. 1992) (accommodation was to refrain from enforcing spacing requirement for group home); U. S. v. City of Philadelphia, 838 F. Supp. 223, 228-29 (E.D. Pa. 1993) (accommodation was to waive yard/lot size requirements for shelter); North Shore-Chicago Rehabilitation, Inc. v. Village of Skokie, 827 F. Supp. 497, 502 (N. D. Ill. 1993) (accommodation was to waive licensing and occupancy requirements of zoning ordinance for rehabilitation center); Oxford House v. City of Plainfield, 769 F. Supp. 1329, 1344 (D. N. J. 1991) (accommodation is to treat unrelated group home residents as if they were a "family"); Regional Economic Community Action Program, Inc. v. City of Middletown, 294 F.3d 35 (2d Cir. 2002) (waiver or modification of rules prohibiting elevators in buildings where this would prohibit certain people from residing in the buildings is a reasonable accommodation under the statute);

Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775 (7th Cir. 2002) (a variance from the distance restrictions for the operation of group homes would be a reasonable accommodation under the ADA).

Any limitation on the number of unrelated individuals in a single-family dwelling is an improper zoning restriction when such individuals live as a single housekeeping unit. Door Alcoholism Program, Inc. v. Bd. of Adjustment of City of New Brunswick, 200 N.J. Super. 191, 197 (App. Div. 1985). As discussed by the New Jersey Supreme Court in State v. Baker, 81 N.J. 99, 113 (1979), a zoning regulation which attempts to "limit residency based upon the number of unrelated individuals present in a single non-profit housekeeping unit cannot pass constitutional muster." The house at issue here bears the same generic character of a permanent functioning family unit, with a structural hierarchy and responsibilities to clean and maintain the property.

Here, the City must reasonably accommodate Hansen House, LLC by determining that under the facts presented, Hansen House, LLC must be granted a reasonable accommodation from the land use ordinance and is entitled to a certificate of occupancy based upon the use described herein.

V. The City May Be Subject to Liability for Failing to Have a Reasonable Accommodation Procedure for Zoning Matters.

As a public entity covered by the Title II of the ADA, the City was required to prepare a self-evaluation plan in accordance with 28 C.F.R. § 35.105, make alterations to its zoning laws in order to comply with Title II's program accessibility requirement, and also prepare a transition plan in accordance with 28 C.F.R. § 35.150(d)(3). Tyler v. City of Manhattan, 849 F. Supp. 1429, 1435 (D. Kan. 1994); Concerned Parents to Save Dreher Park Center v. City of West Palm Beach, 846 F. Supp. 986, 893 (S.D.Fla.1994) (enjoining City to immediately begin to take steps to comply with and conclude with all due speed its compliance with the requirements of 28 C.F.R. §§ 35.105, 35.106 and 35.107, relating to [ADA] self-evaluation, notice and designation of responsible employee and adoption of grievance procedures).

On information and belief, the City never prepared such plans which should have addressed zoning for providers of people with disabilities. Had it done so, the City likely would have prepared a reasonable accommodation procedure applicable to certificate of occupancy requests such as this one, and particularly for this property which is so particularly suited for this use given its size and bedroom count. See Jeffrey O., supra. (City held to have violated the Fair Housing Act because, in part, it never established a reasonable accommodation procedure for people with disabilities).

CONCLUSION

For the reasons and based upon the authorities set forth herein, it is our position that our client's intended use of the single-family dwelling is lawfully permitted under the Atlantic City Zoning Ordinance.

Should you have any questions about the above, please let me know. Otherwise, it shall remain my assumption that the zoning issues your office may have had up to this point shall not serve as an impediment to our client obtaining a certificate of occupancy in the normal course, assuming all other requisite building code requirements are met and are not being imposed in a discriminatory fashion.

Very truly yours,

NEHMAD PERILLO DAVIS & GOLDSTEIN, P.C.

By: _____
KEITH A. DAVIS
kdavis@npdlaw.com

KAD/km

c. Anthony Swan, Esquire - City Solicitor (via email: aswan@cityofatlanticcity.org)
Jennifer Hansen, Managing Member (via email)

S:\Hansen, Jennifer\Mat 10- 116 So. Tallahassee Avenue\Cox, Anthony 7-10-19 KAD.docx

City of Atlantic City
Department of Planning & Development
Suite 508 City Hall
Atlantic City, NJ 08401-4603
(609) 347-5404
Fax (609) 347-5345

CERTIFICATE OF LAND USE COMPLIANCE

Fee: Commercial $50.00 Residential: $25.00
Checks or Money Order Payable to the City of Atlantic City

Applicant's (Your) Name: Hansen House LLC Phone: 609.965.3700
Applicant's (Your) Address: 4 Jimmie Leeds Rd, Suite 3 Galloway, NJ 08205
Owner's Name: Same Phone: Same
Owner's Address: Same
Owner's Signed Consent: David Goddard Date: 7-18-19
E-Mail Address: dgoddard@olchansen.com
Name & Address of Professional Consultant(s): None

Street Address of Subject Property: 165, Tallahassee Ave
Zoning District: R-2 Block(s) 210 Lot(s) 3
Present Use (include total number of units, describe fully): Single Family Home, 7 Bedrooms

This Application is For (fully describe Proposed Use and/or Signage, including total number of units): This will be a 7 BR home with 14 residents. See attached letter from Keith Davis on 7/10/19 to Anthony Cox.

1. THIS CERTIFICATE MAY NOT BE THE ONLY APPROVAL REQUIRED NOR DOES IT SUBSTITUTE FOR A CERTIFICATE OF NON-CONFORMITY, BUILDING PERMIT, PERMITS REQUIRED IN FLOOD HAZARD AREAS, MERCANTILE LICENSE OR OTHER STATE & LOCAL PERMITS.
2. THE OWNER, BY HIS "SIGNED CONSENT" ABOVE, ALSO AUTHORIZES THE RELEASE OF THE PROPERTY RECORD CARDS & ANY OTHER DOCUMENTS TO THE APPLICANT.

FOR OFFICE USE ONLY

APPROVED: DENIED: 7/19/19 Affirmed 7/31/19
CONDITIONS OF APPROVAL:
- No site plan submitted.
- No survey showing adequate cross-street play

APPLICATION #: 19-337 FEE RECEIVED 50.00
DATE FILED: 7/15/19 DATE ISSUED:
AUTHORIZATION:

DISTRIBUTION: CONSTRUCTION DIVISION ____ CITY ENGINEER ____
CODE ENFORCEMENT ____ FIRE DEPARTMENT ____
MERCANTILE OFFICE ____ TAX ASSESSOR ____
OTHER ____ POLICE DEPT. ____

7/19/19
Please note that this facility is located within 600 linear feet of another facility that will house persons with disabilities. This violates Section § 162-1F of the City's codes and ordinances

RECEIVED JUL 22 2019

CITY OF ATLANTIC CITY

DEPARTMENT OF LICENSING & INSPECTIONS
1301 BACHARACH BOULEVARD
CITY HALL – SUITE 409
ATLANTIC CITY, NJ 08401-4603
Telephone: 609-347-5290
Fax: 609-347-5662

July 18, 2019

Hansen House, LLC
Attn: Jan Hansen
4 East Jimmie Leeds Road
Galloway, NJ 08205

Re: Notice of Zoning Violations
16 South Tallahassee Avenue, Atlantic City, NJ

Dear Ms. Hansen:

Hansen House, LLC is identified as the owner of the property located at 16 South Tallahassee Avenue. This property is currently occupied and used as a residential group/community residence, in violation of Section 152-1 of the City Code of the City of Atlantic City which prohibits installing a community residence within 660 linear feet of an existing community residence (See §152-1.F).

Moreover, Hansen House failed to obtain an occupancy permit as required by Section 194-1 of the City Code, notice of which was provided on March 7, 2019 and July 15, 2019. Finally, the property remains subject to a stop construction order issued by the City's Department of Licensing & Inspections, Division of Construction, on July 1, 2019. Given the pattern of disregard for code requirements which are intended to protect the safety of City residents, and the absolute prohibition against a community residence at this specific location, Hansen House must take immediate action to vacate the property and relocated the occupants.

Other violations may be identified and this letter should not be considered a complete listing of all issues pertaining to the property. The City reserves the right to levy fines and penalties and take further action as authorized by law if Hansen House, LLC fails to comply.

Sincerely,

Dale L. Finch
Director

347-5290

DLF/laa
Attachments
Copy: Rob Long, Deputy Commissioner-DCA
Jason Holt, Business Administrator
Cathy Ward, Esq.
Anthony Swan, City Solicitor
Eileen Lindinger, Assistant City Solicitor
Keith Davis, Esq.

S:\H\Hansen, Jennifer\Mat 15- State Litigation-Tallahassee\Complaint.docx

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Phone: (609) 927-1177
Fax: (609) 926-9721
kdavis@npdlaw.com /cwalters@npdlaw.com
Attorneys for Plaintiffs, The Hansen Foundation Inc., Hansen House, LLC, and Rienna Rebetje and All Others Similarly Situated

THE HANSEN FOUNDATION, INC., a New Jersey not for profit corporation; HANSEN HOUSE, LLC, a New Jersey limited liability company; and RIENNA REBETJE, an individual, JOHN DOE and JANE DOE, on behalf of All Others Similarly Situated, Plaintiffs, v. CITY OF ATLANTIC CITY, a municipal corporation of the State of New Jersey, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO.: ATL-L-_____-19 *Civil Action* **VERIFIED COMPLAINT**

Plaintiffs, The Hansen Foundation, Inc., Hansen House, LLC, Rienna Rebetje and All Others Similarly Situated, by way of Complaint against Defendant, The City of Atlantic City, hereby aver and state as follows:

THE PARTIES

1. The Hansen Foundation, Inc. (the "Hansen Foundation" or "Foundation") is a New Jersey, not for profit, tax exempt corporation whose primary purpose is to receive, administer, invest and distribute funds for scientific, educational, and charitable purposes. The Foundation's primary place of business is located at 4 E. Jimmie Leeds Road, Suite 3, Galloway, New Jersey 08205.

2. Hansen House, LLC ("Hansen House"), is a New Jersey limited liability corporation whose primary purpose is to provide housing and drug and alcohol treatment to chronically homeless addicts with the goal of them becoming self-sufficient, as well as to provide quality housing that is affordable to low- and moderate-income persons. Hansen House is a subsidiary of the Hansen Foundation, Inc. It was created to hold real estate that was acquired for the Foundation's purposes. Hansen House's primary place of business is situated at 4 E. Jimmie Leeds Road, Suite 3, Galloway, New Jersey 08205.

3. Rienna Rebetje is a disabled individual in recovery from substance abuse. Rienna Rebetje currently resides at 16 So. Tallahassee Avenue, Atlantic City, New Jersey, a supportive housing program owned and operated by Hansen House (the "Serenity House"). Ms. Rebetje is a person with a disability within the meaning of the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.* (the "FHA"), the Americans with Disabilities Act, 42 U.S.C. § 12010, *et seq.* (the "ADA"),the Rehabilitation Act of 1973, 29 U.S.C. § 794 (the "RA"), and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et. seq.* (the "LAD"). Ms. Rebetje relies on her peers at the Serenity House for support, and her residency at the house is and continues to be essential in aiding her in her recovery from alcoholism and substance abuse.

4. In addition to Rienna Rebetje, approximately thirteen (13) other disabled individuals, who are similarly situated to Ms. Rebetje reside at Serenity House, which provides them with a supportive housing program owned and operated by Hansen House. All of such residents are persons with a disability within the meaning of the FHA, the ADA, the RA and the LAD. Each of the fourteen (14) residents of the Serenity House rely on their peers and fellow

disabled individuals living within the same house for support, and their residency at their house continues to be essential in aiding them in their recovery from substance abuse.

5. Defendant, the City of Atlantic City (the "City") is a municipal corporation of the State of New Jersey located within the County of Atlantic with its principal place of business at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401.

STATEMENT OF FACTS

I. The General Hansen Foundation Structure & Residents

6. The Hansen Foundation is a nonprofit 501(c)(3) tax exempt organization. Its main purpose and mission is to help disabled individuals in recovery from alcohol and substance abuse.

7. The Hansen Foundation founded Hansen House for the purpose of owning or leasing properties containing sober living homes for disabled individuals in recovery from alcohol and substance abuse. The Hansen Foundation and Hansen House shall be collectively referred to as "Hansen" throughout this Complaint.

8. Hansen House owns and leases approximately nine (9) houses throughout Atlantic County for the benefit of over 120 disabled individuals in recovery from alcohol and substance abuse (the houses owned and leased by Hansen House shall collectively be referred to as the "Houses").

9. The Houses are not State-licensed inpatient residential treatment facilities but are the equivalent of a single-family residence, the occupants of which are disabled individuals in recovery from alcohol and substance abuse living together as a single housekeeping unit.

10. Jennifer Hansen is the President of Hansen House. She is also the founder and President of the Hansen Foundation. She herself is also recovering from drug addiction and has

sought to help others in recovery by establishing and managing Hansen House and the Hansen Foundation.

11. Jennifer Hansen does not have any involvement in the daily activities of the Houses. She only intervenes if there is a specific issue that needs her attention such as removal of a resident who may relapse. She also addresses maintenance issues, such as plumbing problems, or expenditures of large sums of money to fix structural problems with the Houses.

12. The Houses do not have any live-in staff or counselors. They are supervised by Hansen Foundation employees.

13. Terri Burns is the Director of Operations of the Serenity Houses.

14. An individual program fee is paid by each resident on a weekly basis to Hansen House to pay for administrative costs.

15. Hansen does not receive any payments from referral sources to take residents.

16. Hansen House pays all of the house utilities and bills.

17. Residents are referred to the Houses from jail and from other, more intensive substance abuse treatment programs.

18. Residents are required to sign a contract to reside at the Houses. A redacted copy of Hansen's "Rules and Resident Agreement" is attached hereto as ***Exhibit A***. The contract requires the payment of a weekly residential program fee and a security deposit. The contract also requires that the resident remain clean and sober; agree to undergo drug testing; agree to abide by a curfew; and agree to a limitation on guest visitations. The contract also requires the resident to attend a weekly house meeting and to attend at least four meetings per week at 12-step programs.

19. Residents of the Houses are drug tested. Drug test results are reported to Probation and Parole if it is a condition of the resident's residency at the Houses. Hansen enjoys a good

reputation with Probation and Parole and the New Jersey drug courts because its residents stay clean and sober, and obtain employment.

20. Residents are required to be employed, engaged in community service, or enrolled in school. Many residents have criminal histories which hamper their ability to find employment. Hansen House assists in finding jobs for its residents. If necessary, Hansen House also provides transportation to and from court and doctor appointments.

21. The bedrooms of the Houses do not have individual locks. There is an evacuation plan for each floor of the Houses. There are smoke and carbon monoxide detectors on each floor and outside the bedrooms that are checked and maintained. There are fire extinguishers on each floor that are similarly tested and maintained.

22. A typical day at the Houses consists of the residents arising, going to work, coming home, cooking dinner, and going to 12 step meetings.

23. Residents of the Houses live together as a family. They eat together, they shop together, and provide each other with the same emotional support as does a family. The residents of the Houses share family like values.

24. There is no requirement that residents of the Houses be employed by any corporate entity associated with The Hansen Foundation or Hansen House.

25. Residents of the Houses are handicapped persons within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h) (the "FHA").

26. The Houses are essential in aiding the residents in their recovery from alcoholism and substance abuse.

The Serenity House

27. On or about March 29, 2019, Hansen House purchased Serenity House.

28. Serenity House is a single-family residence for women in recovery from alcoholism and substance abuse located at 16 So. Tallahassee Avenue and situated in the R-2 Zoning District of the City.

29. Serenity House has seven (7) bedrooms and contains a total of fourteen (14) available beds for its disabled class of residents.

30. On or about May 31, 2019, fourteen (14) disabled residents of one of the Houses operated by Hansen, located at 47 S. Bartram Avenue, Atlantic City, New Jersey (the "Bartram Property"), were required to vacate their home and were in imminent danger of being homeless.

31. Rather than the disabled class of residents of the Bartram Property being displaced onto the streets of the City and risk relapse, Hansen relocated them to the Serenity House on or about May 31, 2019.

32. The disabled residents of Serenity House rely on their peers at Serenity House for emotional support and their residency at Serenity House is and continues to be essential in aiding them in their recovery from alcoholism and substance abuse. See, David Danzis, Residents of A.C. sober living home say house is vital to their survival, Atlantic City Press (August 2, 2019), attached hereto as ***Exhibit B***, exemplifying the benefits Serenity House has provided to its residents. See also, the attached certification from Plaintiff, Rienna Rebetje, attached hereto as ***Exhibit C***, demonstrating the crucial role her residency at Serenity House has had on her road to recovery.

33. Prior to Serenity House, Rienna Rebetje was living on the streets and drugs were an everyday necessity in her life. With the help and support of her family at Serenity House, she has been clean and sober for over a year. See, ***Exhibit C***.

34. The Certification of Rienna Rebetje exemplifies the substantial and life-changing impact living at Serenity House has had on the disabled resident's life.

Communications With The City

35. On or about March 7, 2019, Hansen received a notice from the City's Department of Licensing and Inspections regarding the requirement to obtain an occupancy permit for Serenity House. A copy of the March 7, 2019 Notice is attached hereto as ***Exhibit D***.

36. On or about June 19, 2019, while Hansen was in the process of preparing to apply for the Certificate of Occupancy, a City inspector gave a verbal warning to stop any work at the Serenity House until further clarification was provided and evaluated regarding the nature of the use and whether it constitutes a permitted use.

37. On or about June 22, 2019, Hansen brought an HVAC permit application to the City. Hansen was told by City Building Subcode Official, Anthony Cox, that the application would not be granted until the City received documentation that Serenity House was a permissible use.

38. On or about July 1, 2019, the City's Department of Licensing and Inspection, issued a written Stop Construction Order regarding the installation of a new HVAC System being installed without first obtaining the required permits or inspection. A copy of the Stop Construction Order is attached hereto as ***Exhibit E***.

39. Hansen, through its legal counsel, on July 10, 2019, immediately sent correspondence to Anthony Cox explaining that Serenity House's intended use as a single-family dwelling was permitted under the Atlantic City Zoning Ordinance and that the residents of the Serenity House are a protected class under the FHA. A copy of the July 10, 2019 Letter is attached hereto as ***Exhibit F***.

40. On or about July 15, 2019, Hansen received a Complaint from the City's Code Enforcement Officer, Clinton O. Walden, for failure to obtain an occupancy permit before occupancy of Serenity House occurred and a hearing was scheduled for August 6, 2019. A copy of the July 15, 2019 Complaint Notice is attached hereto as ***Exhibit G***. The hearing has since been adjourned to October 23, 2019. See attached Notification from the Atlantic City Municipal Court attached hereto as ***Exhibit H***.

41. On July 18, 2019, Hansen submitted a Certificate of Land Use Compliance ("CLUC") to the City's Department of Planning and Development for its use as a single-family residence. A copy of the CLUC is attached hereto as ***Exhibit I***.

42. On July 18, 2019, Dale L. Finch, the City's Director of the Department of Licensing and Inspections, sent a Notice of Zoning Violations to Hansen demanding that the disabled class of residents of Serenity House vacate the property. A copy of the July 18, 2019 Letter is attached hereto as ***Exhibit J***.

43. On July 29, 2019, Hansen through its legal counsel, sent a letter to the City Municipal Court confirming the trial date of August 20, 2019 and that the violations identified in the City's July 18, 2019 Letter would be held in abeyance pending the resolution of the municipal court matter. A copy of the July 29, 2019 Letter is attached hereto as ***Exhibit K***.

44. On August 16, 2019, Hansen's legal counsel along with Hansen's representative, Jennifer Hansen, met with City Zoning Officer, Barbara Woolley-Dillon, Michael Perugini, Esq., Catherine Ward, Esq., and Dale Finch in an attempt to resolve the City's inaccurate categorization of Hansen's use as a community residence for people with disabilities at that term is defined by the Ordinance.

45. At the August 16, 2019 meeting, Barbara Woolley-Dillon inappropriately denied the CLUC. The City's notations regarding their denial are reflected on ***Exhibit I.***

46. As reflected on the City's notations on ***Exhibit I***, the City misclassified Serenity House as a "community residence for people with disabilities" and as such stated that it was within 660 linear feet of another community residence in violation of Section 152-1(f) of the Code of the City of Atlantic City (the "Code").

47. Upon information and belief, the City does not maintain a map of community residences whereby a member of the public would know that such a residence is in violation of the 660 lineal feet distance limitation in the Ordinance.

48. Following Hansen's discussion with City officials, it was agreed that Hansen should proceed to apply for a new Certificate of Land Use Compliance as a "group family household" under Section 163-66 of the Code.

49. On August 30, 2019, Hansen, through its legal counsel, filed an appeal of the zoning officer decision to deny the CLUC pursuant to N.J.S.A. 40:55D-72a with the City's Zoning Board of Adjustment. A copy of the August 30, 2019 Letter to City's Zoning Board of Adjustment along with the submitted application are collectively attached hereto as ***Exhibit L.***

50. On September 5, 2019, Hansen, through its legal counsel, supplemented their appeal to the Zoning Board of Adjustment/Commission to lay out the unlawful restriction on the group family household uses, requiring them to be regulated as residential zones outside of the R-1 and R-2 districts. A copy of the September 5, 2019 Letter is attached hereto as ***Exhibit M.***

51. On September 24, 2019, the Plaintiffs, through their legal counsel, received an email and letter from Barbara Woolley-Dillon confirming that the City is not entertaining an accommodation with respect to a group family household in the R-2 Zone or any other use that

violates the zoning ordinance. Ms. Woolley-Dillon went on to state that because the zoning board application was in her analysis incomplete, she summarily determined that the time for filing an appeal has expired. A copy of the September 24, 2019 email and letter are collectively attached hereto as ***Exhibit N.***

II. The City's Misclassification of Serenity House and It's Unlawful Ordinances

52. While the City has failed to define a "community residence for people with disabilities" in their Code, the City makes reference in its Code that such a residence shall be consistent with the State of New Jersey standards for community residences serving individuals with disabilities. See, Section 152-1(c) of the Code.

53. The State of New Jersey defines a "community residence for the developmentally disabled"[1] as:

> [A] community residential facility housing up to 16 persons with developmental disabilities, which provides food, shelter, and personal guidance for persons with developmental disabilities who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities[.]
>
> [N.J.S.A. 30:11B-2.]

54. The State of New Jersey defines "developmental disability" or "developmentally disabled" as:

> [A] severe, chronic disability of a person which: a. is attributable to a mental or physical impairment or combination of mental or physical impairments; b. is manifest before age 22; c. is likely to continue indefinitely; d. results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living, or economic self-sufficiency; and e. reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. Developmental disability includes, but is not limited to, severe disabilities attributable to an intellectual disability,

[1] The State of New Jersey does not have a classification for community residences for people with disabilities, however, they do have a definition for community residence for the developmentally disabled.

> autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments where the above criteria are met.
>
> [N.J.S.A. 30:11B-2.]

55. Pursuant to the Section 163-66 of the Code, a community residence may not be within six hundred and sixty linear feet (660) from another community residence.

56. Section 163-66 of the Code is discriminatory on its face.

57. The City has never provided a rational basis for Section 163-66. As stated by 6th Ward Councilman, Jesse Kurtz, to the Press of Atlantic City, the intent of the Ordinance was to prevent clustering. See, David Danzis, Neighbors concerned about 'clustering in the 6th Ward', Atlantic City Press (August 2, 2019) attached hereto as ***Exhibit O***. Such rationale is unlawful.

58. Regardless, Serenity House is not a community residence for people with disabilities as defined by the State of New Jersey and, therefore, it is not governed by the unlawful six hundred and sixty linear feet (660) distance limitation between such community residences. See, Section 152-1(c) of the Code.

59. The alternative classification for Serenity House, as presented by the City, is a "group family household" for individuals recovering from substance abuse pursuant to Section 163-66 of the Code.

60. A Group Family Household is defined as:

> [A] group of four or more persons, not constituting a family as defined in § 163-15 of this chapter, living together in a dwelling unit as a single housekeeping unit, under a common housekeeping management based on an intentionally structured relationship of mutual responsibility and providing an organization and stability essentially equivalent to that found in families based on relationships of marriage or blood.
>
> [§ 163-66(C)(1) of the Code.]

61. Pursuant to Section 163-66(B) of the Code, group family households are unlawfully restricted to residential zoning districts outside of the R-1 and R-2 zones.

62. The restriction on group family households is patently unlawful and clearly discriminatory on its face, intent and application in violation of the LAD and applicable federal laws.

63. As a group family household for individuals recovering from substance abuse, Serenity House must be permitted in any residential zoning district as a matter of law pursuant to the LAD and applicable federal laws cited herein.

64. As a result of the City's failure to grant the CLUC, the City has failed to make a reasonable accommodation for Hansen and its residents living at the Serenity House as required by law.

65. Upon information and belief, the City has never prepared any self-evaluation plans that addressed zoning for providers for people with disabilities as required by 28 C.F.R. Section 35.105. Had it done so, the City likely would have prepared a reasonable accommodation procedure applicable to issuing CLUC's in this particular instance.

66. The effect of the City's actions is to discriminate against the Plaintiffs and deny a needed housing opportunity to recovering alcoholics and substance abusers within the State of New Jersey.

67. The effect of the City's actions is to limit the housing opportunities of unrelated disabled persons by denying them the right to live together.

68. The City is treating Hansen and the residents of Serenity House in a discriminatory fashion in violation of the LAD and applicable federal laws, and is imposing far more stringent land use requirements on this group of unrelated individuals living together than it imposes upon

individuals living together who are related by blood or marriage or other groups of unrelated disabled persons.

69. By arbitrarily and illegally classifying the premises described as something other than a single-family use, the City is making single family housing unavailable to persons recovering from drugs and alcohol addiction who reside in dwellings.

70. The City has failed to affirmatively further fair housing in its administration and application of its local ordinances and its interpretation of the municipal land use law.

71. The Plaintiffs are living in fear of losing their home and are suffering anxiety, emotional distress, pain, setbacks in their efforts at recovery, and other irreparable harm as a result of Defendant's actions.

CLAIMS FOR RELIEF

COUNT I: FAIR HOUSING ACT – DISPARATE TREATMENT

72. Plaintiffs repeat and reallege paragraphs 1 through 71 as if fully set forth herein.

73. The Fair Housing Act, 42 U.S.C. § 3602, *et. seq.*, (the "FHA") guarantees fair housing to handicapped individuals.

74. It is unlawful under the FHA to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, natural origin or handicap.

75. Under the FHA, the term "handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more of such person's major life activities, a record of such impairment, or being regarded as having such an impairment." 42 U.S.C. § 3602(h). The term "physical or mental impairment" includes "alcoholism" and "drug addiction (other than addiction caused by current, illegal use of controlled substance)." 24 C.F.R. § 100.201.

76. Defendant's Ordinances and actions as stated herein, make unavailable or deny (or will make unavailable or deny) dwellings to Plaintiffs in violation of the FHA in that Defendants' actions demonstrate intentional discrimination on the basis of a handicap.

77. Plaintiffs have been or will be injured by Defendant's actions which deprive Plaintiff, Rienna Rebetje, and all others similarly situated, their right of equal access to housing and deprive Hansen of its right to make housing available.

78. The Defendants actions constitute a violation of the Plaintiffs' rights under the FHA.

COUNT II: FAIR HOUSING ACT – DISCRIMINATORY EFFECT

79. Plaintiffs repeat and reallege paragraph 1 through 78 as if fully set forth herein.

80. Defendant's actions, as stated herein, make unavailable or deny (or will make unavailable or deny) dwellings to Plaintiff, Rienna Rebetje, and all others similarly situated, in violation of the FHA in that Defendant's actions result in (or will result in) discriminatory effects, more specifically, such actions will have the result of disparately impacting Plaintiff, Rienna Rebetje, and all others similarly situated, based on their disability.

81. Plaintiffs have been or will be injured by Defendant's actions which deprive Plaintiff, Rienna Rebetje, and all others similarly situated, their right of equal access to housing and deprive Hansen of its right to make housing available.

82. The Defendants actions constitute a violation of the Plaintiffs' rights under the FHA.

COUNT III: FAIR HOUSING ACT – FAILURE TO GRANT A REASONABLE ACCOMMODATION

83. Plaintiffs repeat and reallege paragraph 1 through 82 as if fully set forth herein.

84. Under the FHA, 42 U.S.C. § 3604(f)(3)(B), the failure of municipal officials to grant a reasonable accommodation to allow individuals with disabilities to reside in a community is discrimination.

85. The Plaintiffs requested a reasonable accommodation pursuant to the Fair Housing Act from the City by applying for a CLUC with regards to Serenity House.

86. The residents of Serenity House are disabled individuals and an accommodation is appropriate under the FHA to allow them residential opportunities.

87. The Defendant denied the CLUC without any finding that any accommodation presented an undue financial or administrative burden upon the City.

88. The Defendant has denied and otherwise made housing unavailable to the Plaintiffs because of the use which helps individuals with a disability.

89. The Defendants actions constitute a violation of the Plaintiffs' rights under the FHA.

COUNT IV: AMERICANS WITH DISABILTIES ACT

90. Plaintiffs repeat and reallege paragraph 1 through 89 as if fully set forth herein.

91. The residents of Serenity House are qualified individuals with a disability as defined by the Americans with Disabilities Act.

92. Hansen is associated with and provides housing to people with disabilities as defined in 42 U.S.C. §12102(2).

93. The Defendant is a public entity pursuant to 42 U.S.C. §12131(1).

94. Section 12132 of the ADA constitutes a general prohibition against discrimination on the basis of disability by public entities.

95. The Defendant's denial of the Plaintiff's CLUC is discriminatory and denies the residents of Serenity House an opportunity to participate in a program in the most integrated setting appropriate to their needs.

96. The Defendant has violated and is continuing to violate the ADA, by: (i) refusing to provide reasonable accommodations to disabled individuals; and (ii) discriminating against disabled individuals.

97. The Defendant's denial of the Plaintiff's CLUC violates the rights of the Plaintiffs under the American With Disabilities Act, 42 U.S.C. 12132, *et. seq.*, and the regulations promulgated thereunder.

COUNT V: VIOLATION OF THE REHABILITATION ACT OF 1973

98. Plaintiffs repeat and realleges Paragraphs 1 through 97 as if fully set forth herein.

99. The Rehabilitation Act, 29 U.S.C. § 791, *et seq.*, provides that no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in or be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance. 29 U.S.C. § 794(a).

100. The City receives federal financial assistance, including through federal grant programs such as the Community Development Block Grant program, which is funded by the U.S. Department of Housing and Urban Development.

101. Section 508 of the Rehabilitation Act defines "program" or "activity" as "all of the operations" of specific entities, including "a department, agency, special purpose district, or other instrumentality of a State or of a local government." 29 U.S.C. § 794(b)(1)(A).

102. The residents of Serenity House are qualified persons with disabilities under the Rehabilitation Act with disabilities that substantially impair one or more major life activities.

103. Section 508 of the Rehabilitation Act constitutes a general prohibition against discrimination on the basis of disability by public entities.

104. The Defendant has violated and is continuing to violate the Rehabilitation Act by: (i) refusing to provide reasonable accommodations to disabled individuals; and (ii) discriminating against disabled individuals.

COUNT VI: VIOLATION OF 42 U.S.C. § 1983

105. Plaintiffs repeat and reallege Paragraphs 1 through 104 as if fully set forth herein.

106. Under color of State Law, the City improperly enacted and applied zoning laws to effectuate discrimination and denied Plaintiffs' CLUC.

107. The City's illegal and improper actions are not roughly proportionate to the public good sought to be achieved and are grossly disproportionate to any asserted public interest because they unduly deprive the Plaintiffs of their constitutional rights far beyond what is reasonable, legal or necessary.

108. The City's actions are illegal because they prevent, frustrate, and impede Plaintiffs' right to use and enjoy the Serenity House.

109. The City's conduct is arbitrary, capricious, unreasonable, malicious, discriminatory and in bad faith, and shocks the conscience.

110. Accordingly, the City's actions violate 42 U.S.C. § 1983.

COUNT VII. VIOLATION OF THE SUBSTANTIVE DUE PROCESS – FOURTEENTH AMENDMENT

111. Plaintiffs repeat and reallege Paragraphs 1 through 110 as if fully set forth herein.

112. The City is wrong as a matter of law, palpably abused its discretionary authority and acted in an arbitrary and capricious manner when it denied Plaintiffs' CLUC.

113. The City's actions were undertaken in bad faith and shock the conscience.

114. Plaintiffs, as the owner and tenants of the Property, have the right to the use and enjoyment thereof.

115. The right includes the ability to use it as a group family household.

116. The City's actions, which were arbitrary, capricious, illegal and conscience-shocking, directly interfere with Plaintiffs' legitimate use.

117. The City's actions, including its improper denial of Plaintiffs' CLUC, have deprived Plaintiffs of a legally-permitted use of the Property.

118. By virtue of the City's arbitrary, capricious, and unreasonable exercise of its powers, the City has violated the Fourteenth Amendment of the United States Constitution.

COUNT VIII: VIOLATION OF NEW JERSEY LAW AGAINST DISCRIMINATION

119. Plaintiffs repeat and reallege Paragraphs 1 through 118 as if fully set forth herein.

120. The New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 *et. seq.*, prohibits a "municipality, county or other local civil or political subdivision of the State of New Jersey, or an officer, employee, or agent thereof to exercise the power to regulate land use or housing in a matter that discriminates" on the basis of a disability. N.J.S.A. 10:5-12.5.

121. Under the LAD, disability means "physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness" or "any mental, psychological or developmental disability. . . resulting from anatomical, psychological, physiological or neurological conditions which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically," N.J.S.A. 10:5-5(q), which definition has been construed by the courts to include alcohol and substance dependence.

122. The Defendant violated Plaintiffs' rights and violated the LAD by denying Plaintiffs' CLUC based upon improper discrimination against Plaintiffs.

123. The Defendant has exercised its power to regulate land use in a way that discriminates against disabled persons without justification or cause by preventing the issuance of a CLUC to the Plaintiffs.

124. The Defendant's conduct was arbitrary, capricious, unreasonable, malicious and in bad faith.

COUNT IX: NEW JERSEY CIVIL RIGHTS ACT

125. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 124 above.

126. The City is violating Plaintiffs' rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 through 10:6-2, by their actions as set forth above, including but not limited to:

a. acting under color of law to unlawfully deprive Plaintiffs of their fair housing rights and their right to live in the dwelling of their choice because of the individual Plaintiffs' handicap; and

b. acting under color of law to unlawfully interfere with Plaintiffs' exercise of their s housing rights and their right to live in the dwelling of their choice through threats, intimidation and coercion because of the individual Plaintiffs' handicap.

RELIEF SOUGHT AS TO ALL COUNTS

WHEREFORE, Plaintiffs request that this court grant the following relief:

A. Enter a temporary restraining order and/or preliminary and permanent injunctions enjoining Defendant, the City of Atlantic City, from taking actions either directly or indirectly which would interfere in any way with Plaintiffs' current use of the Serenity House.

B. Enter a temporary restraining order and/or preliminary and permanent injunctions enjoining the Defendant, the City of Atlantic City, its officers, employees, agents, attorneys and

successors, and all persons in active concert or participating with any of them, from interfering with the operation of Serenity House as a home for recovering alcoholics and substance abusers, and/or from interfering in any way with the rights of the Plaintiffs to reside in those premises;

C. Enter a temporary restraining order and/or preliminary and permanent injunctions enjoining the Defendant, the City of Atlantic City, its officers, employees, agents, attorneys and successors, and all persons in active concert or participating with any of them from actively assisting the Defendant in its efforts to interfere with the rights of recovering alcoholics or substance abusers to reside at Serenity House.

D. An order permanently enjoining Defendant from enforcing the relevant portions of the Code as applied to substance abuse homes;

E. An order requiring the City to issue a CLUC to Plaintiffs;

F. Awarding attorneys' fees, costs of litigation court costs and interest; and

G. Such other and further relief the court deems just and proper.

NEHMAD PERILLO DAVIS & GOLDSTEIN, P.C.
Attorneys for Plaintiffs

Date: September 26, 2019

/s/ Keith A. Davis
KEITH A. DAVIS, ESQUIRE
kdavis@npdlaw.com

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by Jury as to all issues.

DESIGNATION OF TRIAL COUNSEL PURSUANT TO RULE 4:25-4

Keith A. Davis, Esquire and Jessica R. Witmer, Esquire, are hereby designated as trial counsel pursuant to Rule 4:25-4.

RULE 4:51 CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding. I further certify that no other action or arbitration proceeding is contemplated.

I understand that I have a continuing obligation during the course of the litigation to file and serve on all other parties and with the Court an Amended Certification if there is a change in the facts stated above. I further understand that I am under a continuing duty to disclose the names of any other parties who should be joined in this action, and that the Court may compel the joinder of additional parties in appropriate circumstances, either upon its own motion or that of a party.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

NEHMAD PERILLO DAVIS & GOLDSTEIN, P.C.
Attorneys for Plaintiffs

Date: September 26, 2019

/s/ Keith A. Davis
KEITH A. DAVIS, ESQUIRE
kdavis@npdlaw.com

VERIFICATION

1. Jennifer Hansen, of full age, hereby certify as follows:

2. I am the founder and President of The Hansen Foundation, Inc. and Hansen House, LLC, Plaintiffs in this action and I am authorized representative of the Plaintiff.

3. I have read the foregoing Verified Complaint. It is based upon my personal knowledge and upon documents and information supplied by others. As to information based upon my personal knowledge, the facts contained therein are true to the best of my knowledge.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made herein by me are willfully false, I am subject to punishment.

Dated: September 26, 2019

JENNIFER HANSEN

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THE HANSEN FOUNDATION, INC. et al.,

Plaintiffs,

v.

CITY OF ATLANTIC CITY,

Defendant.

No. 1:19-cv-18608 (NLH/AMD)

ORDER

For the reasons expressed in the Court's Opinion filed today,

IT IS on this 3rd day of December, 2020

ORDERED that Plaintiffs' motion for summary judgment [ECF 25] be, and the same hereby is, GRANTED in part and DENIED in part; and it is further

ORDERED that Defendant's cross-motion for summary judgment [ECF 26] be, and the same hereby is, GRANTED in part and DENIED in part; and it is further

ORDERED that Defendant is hereby permanently enjoined from enforcing the distance requirement of Section 152-1 of the City of Atlantic City's City Code; and it is further

ORDERED that the remaining claim in Plaintiffs' complaint not resolved by the parties' motions is remanded to state court for lack of subject matter jurisdiction; and it is further

ORDERED that the Clerk of the Court shall remand this file and then mark this matter as CLOSED.

/s Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THE HANSEN FOUNDATION, INC. et al.,

Plaintiffs,

v.

CITY OF ATLANTIC CITY,

Defendant.

No. 1:19-cv-18608 (NLH/AMD)

OPINION

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HILLMAN, District Judge

The matter involves a dispute between a home-living facility for individuals dealing with drug and alcohol addiction and the City of Atlantic City over the City's enforcement of various zoning provisions of its City Code. Plaintiffs challenge two separate provisions of the City Code, and allege a series of violations of federal, state, and constitutional law regarding these provisions and the actions taken by the City in the course of this dispute. Currently pending before the Court are both parties' cross-motions for summary judgment. For the reasons expressed below, both motions will be granted in part and denied in part.

Background

The Court takes its facts from the parties' statements of material fact submitted pursuant to Local Civil Rule 56.1(a). Plaintiff Hansen House, LLC ("Hansen House") is a New Jersey limited liability corporation and subsidiary of Plaintiff Hansen Foundation, Inc., a nonprofit organization whose mission is to provide affordable, long-term, safe recovery residences, access to treatment, community programs, and the tools needed to lead healthy productive lives for people both new to and in long-term recovery. Plaintiff Rienna Pebetje is a disabled individual in recovery from substance abuse, and a resident at the home at the center of this dispute.

In March 2019, Hansen House purchased a single-family home located at 16 South Tallahassee Avenue, Atlantic City, New Jersey. Hansen House sought to make the property, which it named "Serenity House," available to women in recovery from alcoholism and substance abuse. Serenity House is located within Atlantic City's R-2 Zoning District.

On March 7, 2019, the City notified Hansen House that it was in violation of City Ordinance § 194-1(B) requiring a certificate of occupancy prior to the establishment of a new occupation. Over two months later, in May 2019, Hansen House moved residents of another of its homes to the Serenity House, which it alleges was necessary after the residential lease at the other home lapsed. By Hansen House's admission, it did not obtain a certificate of occupancy before its residents moved into Serenity House. (ECF No. 25-2 at ¶ 9).

In June 2019, Hansen House received a notice of a violation from the City's Department of Licensing & Inspections following an inspection of the house, because it had begun to install an H.V.A.C. system without first obtaining a construction permit as required by N.J.A.C. 5:23-2.16. Accordingly, the City's Department of Licensing & Inspections issued a "stop work order" pursuant to N.J.A.C. 5:23-2.14. Then, on July 10, counsel for Hansen House sent a letter to the City's Building and Subcode Official, Anthony Cox. (ECF No. 1-1, Compl. Ex. F). The letter

laid out arguments similar to those Plaintiffs would later make in this lawsuit. Specifically, the letter asserted that Serenity House was properly classified as a "single-family residence," argued that if it were not, a "reasonable accommodation" in the form of a waiver or modification of the City's zoning ordinances and a corresponding certificate of occupancy must be granted, and stated that if the City did not permit Serenity House to operate as planned, the City faced liability from suit under federal anti-discrimination law.

It was not until July 15, 2019, almost two months after Hansen House moved residents into Serenity House without obtaining a certificate of occupancy and a few days after Plaintiffs sent the letter described above, that the City filed a municipal complaint against Serenity House for "failure to obtain an 'occupancy permit' before new occupancy occurred," in violation of City Code § 194-1B. (ECF No. 1-1, Complaint Ex. G). Plaintiffs responded to this complaint by submitting an application for a Certificate of Land Use Compliance ("CLUC") on July 18, which sought to register the house as a single family home. Under the City Code, a CLUC is a prerequisite for certain forms of housing to receive a certificate of occupancy.

That same day, Plaintiffs received an order to vacate the Serenity House. The order was sent by Dale Finch, Director of the City's Department of Licensing and Inspections, and stated

that it was based on both "a pattern of disregard for code requirements," and the "absolute prohibition against a community residence at this specific location" under City Code § 152-1. (ECF No. 1-1, Compl. Ex. J). Section 152-1 governs "(family) community residence[s]," which the provision makes clear is the City Code's term for "housing for persons with disabilities," and mandates that "[c]ommunity residences, except as required by state law, . . . be at least 660 linear feet in any direction from the closest existing community residence." Plaintiffs have not been forced to actually vacate the residence.

The next day, July 19, 2019, Serenity House's CLUC application was denied by City Zoning Officer Barbara Woolley-Dixon. The parties met to discuss the situation on August 16, at which meeting representatives for Hansen House were provided with the denied CLUC application. (ECF No. 1-1, Compl. Ex. I). The application listed multiple procedural requirements for the CLUC form that had not been fulfilled, and also included a note stating that Serenity House was in violation of § 152-1's distance requirement; the parties dispute whether the procedural violations, or § 152-1, were the actual reason for the denial. At this meeting, the possibility of Serenity House being classified as a "group family household" was also discussed; while the parties' briefs further dispute which side made the suggestion, Plaintiffs' initial Statement of Undisputed Material

Facts acknowledges that "Ms. Hansen [] proposed to file another CLUC as a 'group family household' under City Code Section 163-66." (ECF No. 25-2 at ¶ 21).

Two weeks later, on July 30, Hansen House filed an appeal and a request for an interpretation of the City's zoning provisions with the City's Zoning Board of Adjustment. The filing appealed what they characterized as the City's denial of their CLUC because of a determination that Serenity House was a community residence governed by the distance requirement of § 152-1, argued that Serenity House was in fact a group family household under § 163-66, and alternatively requested an interpretation by the Zoning Board as to exactly what form of housing Serenity House constituted. (ECF No. 1-1, Compl. Ex. L).

At some point after submitting their appeal and request for an interpretation, Plaintiffs apparently realized that pursuant to § 163-66B, group family households are barred from the R-2 district that Serenity House is located in, and filed a supplement to their appeal on September 5. (ECF No. 1-1. Compl. Ex. M). That supplement again requested that the CLUC denial be overturned, arguing that the denial had occurred because of the City's determination that Serenity House was a community residence governed by § 152-1, and again argued that Serenity

House was and should be characterized as a single family home permitted in the R-2 district.

A few weeks later, on September 24, the Zoning Board sent Plaintiffs a letter regarding the deficiencies in their appeal and request for an interpretation. (ECF No 1-1, Compl. Ex. N). The letter made clear that the Zoning Board was unable to review their application based purely on procedural grounds: Plaintiffs had failed to pay the filing fee and attach multiple documents providing information related to the ownership of the house as required under New Jersey law and the City Code. It further explicitly stated that "the City lacks sufficient information to characterize the use of the property and takes no position on same."

Two days later, on September 26, 2019, Plaintiffs filed their complaint in the Superior Court of the State of New Jersey, Atlantic County. (ECF No. 1-1). The complaint asserts both facial challenges to Sections 152-1 and 163-66B, as well as a number of as-applied challenges and claims based on Defendant's actions throughout this process. Specifically, the complaint brings claims under the following federal statutes: The Fair Housing Act ("FHA"), 42 U.S.C. § 3602 et. seq. (Counts I-III); the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 et. seq. (Count IV); the Rehabilitation Act of 1973 ("RHA"), 29 U.S.C. § 791 et. seq. (Count V); 42 U.S.C. § 1983

(Count VI); the Fourteenth Amendment of the United States Constitution (Count VII); the New Jersey Law Against Discrimination ("NJLAD"), N.J.S.A. 10:5-1 et. seq. (Count VIII); and the New Jersey Civil Right Act ("NJCRA"), N.J.S.A. 10:6-1 et. seq. (Count IX).

On October 2, 2019, Defendant removed the case to this Court. (ECF No. 1). On March 3, 2020, Plaintiffs filed a motion for summary judgment on each of their claims. (ECF No. 25). Defendants responded by filing their own cross-motion for summary judgment. (ECF No. 26). Finally, on June 29, 2020, Plaintiffs filed a reply brief in further support of their motion. (ECF No. 30).

Discussion

I. Subject Matter Jurisdiction

The Court has original federal question jurisdiction over Plaintiff's federal claims under 28 U.S.C. § 1331, and has supplemental jurisdiction over the New Jersey state law claims pursuant to 28 U.S.C. § 1367(a).

II. Legal Standard for Motions for Summary Judgment

Summary judgment is appropriate where the Court is satisfied that the materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, or interrogatory answers, demonstrate that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 330 (1986); Fed. R. Civ. P. 56(a).

An issue is "genuine" if it is supported by evidence such that a reasonable jury could return a verdict in the nonmoving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if, under the governing substantive law, a dispute about the fact might affect the outcome of the suit. Id. In considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence "is to be believed and all justifiable inferences are to be drawn in his favor." Marino v. Industrial Crating Co., 358 F.3d 241, 247 (3d Cir. 2004)(quoting Anderson, 477 U.S. at 255).

Summary judgment is appropriate where the Court is satisfied that the materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, or interrogatory answers, demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 330 (1986); Fed. R. Civ. P. 56(a). If review of cross-motions for summary judgment reveals no genuine

issue of material fact, then judgment may be entered in favor of the party deserving of judgment in light of the law and undisputed facts. See Iberia Foods Corp. v. Romeo Jr., 150 F.3d 298, 302 (3d Cir. 1998) (citation omitted).

III. Analysis

Plaintiffs' Complaint attacks City Code Sections 152-1 and 163-66B, as well as the City's enforcement of those provisions and denial of Plaintiffs' CLUC application, through claims under both federal and state law. Plaintiffs' claims can be broken down into two broad categories: facial attacks on the two provisions of the City Code, and as-applied claims based on Defendant's allegedly discriminatory denial of Plaintiffs' CLUC application and other actions. As the parties' arguments regarding the separate claims largely divide along the lines of these two categories, the Court will address the claims in that manner.

A. Plaintiffs' Facial Challenges to City Code Sections 152-1 and 163-66B

Plaintiffs allege a series of facial challenges to City Code Sections 152-1 and 163-66B based under the FHA, ADA, and RHA. The FHA, which was enacted to bar housing discrimination on a number of fronts, was amended in 1988 by the Fair Housing Amendments Act ("FHAA") to extend its protections to "individuals with handicaps." Specifically, The FHAA makes it

unlawful "to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap." 42 U.S.C. § 3604(f)(1); see Cmty. Servs. v. Wind Gap Mun. Auth., 421 F.3d 170, 176 (3d Cir. 2005). The ADA and RHA both have similar provisions: the ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by an such entity," 42 U.S.C. § 12132, while the RHA provides that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

"Since the requirements of the FHAA, ADA and Rehabilitation Act are essentially the same, courts have concluded that the FHAA analysis can be applied to ADA and Rehabilitation Act claims as well in such cases where claims are brought under all three statutes." Yates Real Estate, Inc. v. Plainfield Zoning Board of Adjustment, 404 F. Supp. 3d 889, 914 (D.N.J. 2019) (quoting In re Lapid Ventures, LLC, No. 10-6219 (WJM), 2011 WL 2429314, at *5 (D.N.J. June 13, 2011). "As a predicate to success on any of these claims, a plaintiff must present a class

of protected individuals, i.e. handicapped individuals." Id. (quoting 901 Ernston Rd., LLC v. Borough of Sayreville Zoning Bd. of Adjustment, No. 18-2442, 2018 WL 2176175, at *5 (D.N.J. May 11, 2018)). Courts in this Circuit have held that drug and alcohol addiction qualify as a handicap under these statutes, and Defendant does not appear to dispute that this predicate element has been satisfied. 901 Ernston Rd., LLC, 2018 WL 2176175 at *5.

With that established, the Court turns to Plaintiffs' actual claims. A plaintiff can prove a violation of the FHA, ADA, or RHA in one of three ways: "(1) a showing of disparate treatment, or intentional discrimination; (2) a showing of disparate impact; or (3) a showing of a refusal to make reasonable accommodations." Yates Real Estate, 404 F. Supp. 3d at 915 (citing 901 Ernston Rd., LLC, 2018 WL 2176175 at *5-6). Plaintiff here has alleged all three forms. Their disparate treatment and disparate impact claims are properly categorized as facial challenges, whereas their failure to provide a reasonable accommodation claims are as-applied challenges based on Defendant's actions during this dispute. The Court will turn first to Plaintiffs' facial challenges.

1. Plaintiffs' Disparate Treatment Claim

Plaintiffs first allege that City Code § 152-1 is an example of disparate treatment, in that it facially

discriminates against individuals with disabilities in violation of the FHA, ADA, and RHA. Defendant raises only one argument in opposition to Plaintiffs' motion for summary judgment and in support of its own cross-motion; as this argument is otherwise unrelated to Plaintiffs' arguments, the Court will start there.

Specifically, Defendant argues that summary judgment must be granted on Plaintiffs' claims regarding § 152-1 because the claims are moot, as the city has "promise[d] not to enforce Section 152-1's distance requirement against Hansen House or any other similarly situated individual or entity." (ECF No. 26-1 at 23). Defendant states it initially advised Hansen House of this promise during a status conference before the Magistrate Judge assigned to this matter, and it supports it here with a declaration again stating that the provision will not be enforced. Based on this promise, Defendant declares that "[t]here cannot be a finding of past, present, or future harm because the City's decision not to enforce this ordinance removes any possibility of harm to Hansen House or any other similarly situated individual or entity in the City." Id.

In support of this argument, Defendant relies entirely on Tait v. City of Philadelphia, 410 F. App'x. 506, 509 (3d Cir. 2011), for the proposition that "[w]hen a government body promises not to enforce a restriction against a plaintiff, or at all, there is no longer 'a substantial threat of real harm'

because 'intervening events [have] remove[d] the possibility of harm." This, however, is not the standard for assessing mootness in cases like this – the quoted passage from Tait is a discussion of the standard for assessing ripeness, a similar yet separate doctrine the Court will address later in this Opinion.

Here, the central question is whether Defendant's promise not to enforce § 152-1 rendered an already-filed lawsuit moot. As the Third Circuit recently outlined, courts "are reluctant to declare a case moot [] when the defendant argues mootness because of some action it took unilaterally after the litigation began." Hartnett v. Pennsylvania State Education Association, 963 F.3d 301, 306 (3d Cir. 2020). Contrary to the more expansive standard claimed by Defendant, such "voluntary cessation" actions "will moot a case only if it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" Fields v. Speaker of the Pa. House of Representatives, 936 F.3d 142, 161 (3d Cir. 2019) (quoting Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 719 (2007)). Importantly, "[t]he party urging mootness bears the 'heavy burden' of showing that it will not 'revert to' its prior policy." Id. (quoting Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012, 2019 n.1, (2017)).

The Court finds that Defendant has not met this heavy burden. Nor has it truly tried to; the only basis the City has given for why the Court should find Plaintiffs' claims moot is that they have promised not to enforce the provision in question. That "promise," however, was made after litigation had already commenced, and Defendant makes no claim that it is in any way binding on the City. Further, unlike cases in which courts have found that a voluntary cessation did render a claim moot, "there have been no subsequent events that make it absolutely clear that [Atlantic City] will not [resume enforcement of] the allegedly wrongful [provision] in the absence of the injunction." DeJohn v. Temple University, 537 F.3d 301, 309 (3d Cir. 2008) (citing Los Angeles County v. Davis, 440 U.S. 625, 631 (1979)). As Plaintiffs argue, there is simply no assurance here that Atlantic City will not attempt to enforce the provision again at a later date, either against Plaintiffs or another, similar party, and Defendant has pointed to nothing that would affirmatively stop them from doing so.

Defendant's "promise," on its own, is simply not enough to provide the Court with the "absolute" clarity it requires to find Plaintiffs' claim moot. Instead, "[t]he timing of Defendant['s]" promise not to enforce § 152-1, after litigation had already begun, "as well as the ease by which Defendant[] could conceivably re-institute the ban, convince the Court that

the alleged injury could reasonably recur absent the requested relief." Cottrell v. Good Wheels, No. 08-1738 (RBK/KMW), 2009 WL 3208299, at *5 (D.N.J. Sept. 28, 2009). Accordingly, the Court finds that Plaintiffs' claims as to § 152-1 are not moot, and will proceed to analyze Plaintiffs' arguments for summary judgment.

"Generally, to prevail on a disparate treatment claim, a plaintiff must demonstrate that some discriminatory purpose was a 'motivating factor' behind the challenged action." 431 East Palisade Avenue Real Estate, LLC v. City of Englewood, 977 F.3d 277, 284 (3d Cir. 2020) (quoting Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 421 F.3d 170, 177 (3d Cir. 2005)). However, "where a plaintiff demonstrates that the challenged action involves disparate treatment through explicit facial discrimination, or a facially discriminatory classification, a plaintiff need not prove the malice or discriminatory animus of a defendant," because "the focus is on the explicit terms of the discrimination." Id. at 284 (quoting Wind Gap, 421 F.3d at 177).

The Court easily finds that § 152-1 is explicitly discriminatory. The specific provision in question here, 152-1(f), provides that "Community residences, except as required by state law, will be at least 660 linear feet in any direction from the closest existing community residence as measured from the nearest property line of the proposed community residence to

the nearest property line of the existing community residence along legal pedestrian rights-of-way." The distance requirement itself does not explicitly reference housing for individuals with disabilities. However, § 152-1 is the only provision of Article I of Chapter 152 of the City Code, which is titled "Housing for Persons with Disabilities," with § 152-1 titled "Location restricted." And, perhaps most importantly, the prefatory language for § 152-1 explicitly states that "The location of housing for persons with disabilities shall be regulated as follows," ensuring there is no confusion regarding which population of people § 152-1 is intended to restrict. This is a clear example of explicit discrimination.

Having established that § 152-1 discriminates against individuals with disabilities on its face, the burden would then normally shift to Defendant to provide justification for this disparate treatment. Mt. Holly Gardens Citizens in Action, Inc. v. Township of Mount Holly, 658 F.3d 375, 382 (3d Cir. 2011) (if a plaintiff establishes his prima facie case, "then we look to see whether the defendant has a legitimate, non-discriminatory reason for its actions."). The standard in this circuit for such justifications is, generally, that the "justification must serve, in theory and practice, a legitimate, bona fide interest of the [] defendant, and the defendant must show that no alternative course of action could be adopted that would enable

that interest to be served with less discriminatory impact." Resident Advisory Bd. v. Rizzo, 564 F.2d 126, 149 (3d Cir. 1977). As the Rizzo Court made clear, "[i]f the defendant produces no evidence to justify the disparate treatment, a violation is proved." Id.

In the case at hand, the drafters of the City Code again chose to be explicit about their purpose: § 152-1(a) explains that housing for individuals with disabilities "shall be located a sufficient distance from any existing community residences so that the proposed community residence does not lessen nor interfere with the normalization and community integration of the residents of existing community residences or combine with any existing community residences to contribute to the creation or intensification of a de facto social service district." However, Defendant has chosen not to raise any such arguments or justifications in its brief; as previously mentioned, the only argument raised by the City regarding § 152-1 is the mootness argument dispensed of above.

Accordingly, even were the Court to accept the explanation in § 152-1(a) as its own form of counterargument, Defendant has entered no evidence into the record to support this justification. And even if they had, as Plaintiffs note, prior courts in this district have previously rejected similar justifications. See, e.g., Arc of New Jersey, Inc. v. State of

N.J., 950 F. Supp. 637, 645 (D.N.J. 1996); Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth, 876 F. Supp. 614, 623-24 (D.N.J. 1994).

The Court will therefore grant Plaintiffs' motion for summary judgment on its disparate treatment claim, and deny Defendant's cross-motion. As remedy, Plaintiffs seek an order permanently enjoining Defendant from enforcing the distance requirement of City Code § 152-1. Section 3613 of the FHAA states that "if the court finds that a discriminatory housing practice has occurred . . ., the court may . . . grant as relief, as the court deems appropriate, any permanent or temporary injunction." 42 U.S.C. § 3613(c)(1). Having made such a finding, the Court deems permanent injunctive relief appropriate in this case, and will issue an order permanently enjoining Defendant from enforcing the distance requirement of City Code § 152-1.

2. Plaintiffs' Disparate Impact Claims

Plaintiffs next argue that Sections 152-1 and 163-66B of the City Code violate the FHA, ADA, and RHA based on their disparate impact on individuals with disabilities. As the Court has already granted Plaintiffs summary judgment as to their disparate treatment claim regarding § 152-1, it need not further address that provision. Accordingly, the Court will turn to the parties' arguments as to § 163-66B.

For a claim of "disparate impact under the FHAA, the plaintiff must show that the [City's] action had a greater adverse impact on the protected group . . . than on others." 901 Ernston Rd., LLC, 2018 WL 2176175 at *7 (quoting Lapid-Laurel LLC v. Zoning Bd. of Adjustment of Twp. of Scotch Plains, 284 F.3d 442, 466-67 (3d Cir. 2002)). "'[N]o single test controls in measuring disparate impact,' but the Residents must offer proof of disproportionate impact, measured in a plausible way." Mt. Holly Gardens Citizens in Action, Inc., 658 F.3d at 382 (quoting Hallmark Developers, Inc. v. Fulton Cnty., 466 F.3d 1276, 1286 (11th Cir.2006)). "Typically, 'a disparate impact is demonstrated by statistics,' and a prima facie case may be established where 'gross statistical disparities can be shown.'" Id. (quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 307-08 (1977)).

The provision in question here, § 163-66B, provides that "group family households may occupy dwelling units within the City located in districts other than the R-1 and R-2 Residential Districts." Another provision, § 163-66(c)(1), defines a "group family household" as "a group of four or more persons, not constituting a family as defined in § 163-15 of this chapter, living together in a dwelling unit as a single housekeeping unit, under a common housekeeping management based on an intentionally structured relationship of mutual responsibility

and providing an organization and stability essentially equivalent to that found in families based on relationships of marriage and blood." Accordingly, Plaintiffs argue that this restriction on group family households disparately impacts individuals recovering from an addiction to drugs or alcohol, as they are more likely to require a living arrangement that falls within that definition and cannot establish one within the R-1 or R-2 zoning districts.

In support of their claim, Plaintiffs first point the Court to statistics demonstrating that the R-1 and R-2 districts "happen to be two of the City's most affluent neighborhoods." (ECF No. 25-1 at 19). Second, Plaintiffs refer the Court to the case of Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. 450 (D.N.J. 1992). There, the court held that:

> "[P]laintiffs have established a *prima facie* case of disparate impact by showing that the Township's interpretation of the definition of "family" in its zoning ordinance imposes more stringent requirements on groups of unrelated individuals wishing to live together in a rental property than on individuals related by blood or marriage. Because people who are handicapped by alcoholism or drug abuse are more likely to need a living arrangement such as the one Oxford House provides, in which groups of unrelated individuals reside together in residential neighborhoods for mutual support during the recovery process, Cherry Hill's application of this ordinance has a disparate impact on such handicapped people."
>
> Id. at 461.

Defendant, in opposing Plaintiffs' motion for summary judgment and in support of its own cross-motion, argues that Plaintiffs

have failed to put forth sufficient relevant evidence to demonstrate that § 163-66B has a disparate impact on individuals like those living in Serenity House.

Defendant first notes, accurately, that the only statistics cited by Plaintiffs in their moving brief's disparate impact argument relate to the relative levels of poverty in Atlantic City's different zoning districts. (See ECF No. 25-9, Pl. Ex. F; ECF No. 25-10, Pl. Ex. G) (comparing statistics on poverty rates in Atlantic City to map of zoning districts). However, Plaintiffs fail to make any direct argument as to how this demonstrates disparate impact; while the implication here appears to be that the City intended to keep facilities like Serenity House out of the wealthier districts, such an argument would go to the assessment of Defendant's justifications for any disparate impact the provision has, rather than serving as demonstration of a *prima facie* case of discrimination. Without any further evidence on this point or any direct explanation regarding how these statistics relate to the impact of the provision on individuals suffering from addiction, the Court finds that these statistics do not demonstrate a *prima facie* case of discrimination.

Nor is the Court convinced that Plaintiffs' almost complete reliance on Oxford House is justified. The central finding of that case is that "people who are handicapped by alcoholism or

drug abuse are more likely to need a living arrangement such as the one [Serenity] House provides" – a proposition that the court in Oxford House simply stated with no citations and no reference to any supporting evidence in the record before it. See 799 F. Supp. at 461. Plaintiffs' moving brief simply quotes this statement for their central argument, providing no evidence to demonstrate that it is true. However, as the Supreme Court has repeatedly made clear, "it is not enough to simply allege that there is a disparate impact ... or point to a generalized policy that leads to such an impact." Smith v. City of Jackson, 544 U.S. 228, 241 (2005). Instead, "[a] plaintiff must show causation by statistical evidence sufficient to prove that the practice or policy resulted in discrimination. A plaintiff who 'fails to . . . produce statistical evidence demonstrating a causal connection cannot make out a prima facie case of disparate impact.'" Bida v. Shuster Mgmt. LLC, No. 18-10975-KM-JBC, 2019 WL 1198960, at *4 (D.N.J. Mar. 14, 2019) (quoting Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmties. Project, Inc., 576 U.S. 519, 544 (2015)).

In response to Defendant's argument that they had not provided any statistical evidence of disparate impact, Plaintiffs assert in their reply brief that "it is not a secret that there is an opioid epidemic within the State of New Jersey. Houses such as Serenity House are especially necessary not only

within the State of New Jersey but more specifically within Atlantic County and Atlantic City." (ECF No. 30 at 21). They cite to two pieces of evidence: statistics showing the number of deaths from drug overdoses in the United States and in New Jersey in particular, and a letter from the Atlantic County Sheriff supporting Hansen House's work and describing "[a]ddiction and Mental health [as] among the most significant issues affecting every community in Atlantic County." (ECF No. 25-4, Pl. Ex A).

The Court does not see how this evidence supports the claim that § 163-66B's restriction on group family households in the R-1 and R-2 districts has a disparate impact on individuals recovering from drug and alcohol addiction. Hansen House's evidence instead seems directed at arguing that their work helping individuals recovering from drug and alcohol addiction is important and effective – arguments that the City does not appear to dispute or contradict. However, this is simply not evidence that § 163-66B has a greater impact on individuals recovering from addiction than on other groups. Having been provided no plausibly measured proof of disproportionate impact, the Court finds that Plaintiffs' have failed to state a *prima facie* case that § 163-66B is discriminatory. Accordingly, Plaintiffs' motion for summary judgment on its disparate impact

claim regarding the provision will be denied, and Defendants' cross-motion will be granted.

B. Plaintiffs' As-Applied Discrimination Claims

Beyond their facial challenges to Sections 152-1 and 163-66B, Plaintiffs also allege a number of claims regarding Defendant's application of the provisions to Serenity House. As mentioned above, Plaintiffs allege that Defendant violated the FHA, ADA, and RHA by failing to provide them with a reasonable accommodation. Plaintiffs also raise reasonable accommodation arguments under the NJLAD and NJCRA, and have alleged additional claims under 42 U.S.C. § 1983 and the Fourteenth Amendment for Defendant's allegedly discriminatory actions. Defendant's central argument as to all of these claims is that they are not yet ripe and must be dismissed, because the City has not yet had the opportunity to reach a final decision as to the application of its zoning regulations to Serenity House. The Court turns now to the question of whether Plaintiffs' various claims are ripe for adjudication.

1. Plaintiffs' FHA, ADA, and RHA Reasonable Accommodation Claims

The Court will first address Plaintiffs' claims that Defendant violated the FHA, ADA, and RHA by failing to provide them a reasonable accommodation. Plaintiffs claim they sought such an accommodation in the form of permission for "Serenity

House's disabled occupants—in the event Serenity House was classified as a 'group family household'—[to] reside in the City's R-2 Zone despite" § 163-66B's restriction on such housing in that zoning district. (ECF No. 25-1 at 21).

Defendants oppose Plaintiffs' motion and move for summary judgment themselves on the basis of Plaintiffs' failure to seek a zoning variance from the City's Zoning Board of Adjustment under City regulations. According to Defendant, this failure is fatal to Plaintiffs' claims at this stage, and therefore summary judgment must be granted on them.[1] The Court first notes that it is uncontested that Plaintiffs did not file a formal application for a zoning variance from the Zoning Board. (See ECF No. 26-2 at ¶ 72; ECF No. 30-3 at ¶ 72). Plaintiffs instead argue that they "are not required to make futile gestures" such as applying for a zoning variance before filing their claims here. (ECF No. 30 at 5).

While the Third Circuit has not directly ruled on this question, it did provide a helpful discussion of the

[1]The Court notes here that, although Defendants have styled their argument against these claims as an argument regarding failure to exhaust administrative remedies, the central case they cite, Lapid-Laurel LLC v. Zoning Bd. of Adjustment of Twp. of Scotch Plains, and the doctrine it outlines, is better described as dealing with the question of ripeness. See Congregation Kollel, Inc. v. Township of Howell, N.J., 2017 WL 637689, at *11 (D.N.J. Feb. 16, 2017)(analyzing Lapid-Laurel and the impact of its discussion of a plaintiff's failure to apply for a variance on "ripeness questions in the context of FHAA").

considerations involved in Lapid-Laurel LLC v. Zoning Bd. of Adjustment of Twp. of Scotch Plains, 284 F.3d 442 (3d Cir. 2002). There, the Third Circuit had held that "courts reviewing reasonable accommodations challenges to local land use decisions brought under the FHAA should ordinarily limit their review to the administrative record," which the Court noted "assumes that plaintiffs who bring reasonable accommodations claims against localities must usually first seek redress through variance applications to the local land use authority." Id. at 451 n.5. In squaring this holding with prior district court cases that had held "that in some circumstances a plaintiff need not first apply for a variance in order to bring an FHAA reasonable accommodations claim," the Court approvingly described the approach of the Seventh and Eight Circuits to this question. Id. As Lapid-Laurel explained, the Seventh Circuit had held that "in general a city must be afforded the opportunity to make the requested accommodation," but the plaintiff's claim would still be considered ripe for adjudication even if it hadn't sought a variance "if the variance application process was demonstrably futile." Id. (citing United States v. Village of Palatine, 37 F.3d 1230, 1233-34 (7th Cir. 1994) and Oxford House-A v. City of Univ. City, 87 F.3d 1022, 1024-25 (8th Cir. 1996)).

This explanation fits with the one on-point case Plaintiffs have cited in their argument against administrative exhaustion or ripeness concerns, Assisted Living Assocs. of Moorestown, L.L.C. v. Moorestown Twp., 996 F. Supp. 409 (D.N.J. 1998), which the Third Circuit explicitly mentioned in its explanation.[2] In Moorestown, the court found that the act of seeking a zoning variance would have been futile because "there [was] no question as to what the result of an application for a variance" would be, given that the Defendant's own witness "testified that it is 'extremely unlikely' that a variance would be granted and that he would not recommend such a variance," and apparently conceded that "such a request would be futile." Id. at 426.

Plaintiffs point to no comparable evidence of futility here. Plaintiffs' argument consists of a lengthy description of their applications and interactions with City officials during their attempt to get approval for the Serenity House. While the Court agrees that the City officials' instructions and actions did not provide a model of clarity throughout the pre-litigation

[2] Although Plaintiffs have cited two other cases, besides Lapel-Laurel and Village of Palpatine, for the proposition that they need not pursue a zoning variance if it would be futile to do so, neither of those cases discuss the futility issue in question here. See Easter Seal Soc'y of New Jersey v. Township of N. Bergen, 798 F.Supp. 228, 236 (D.N.J.1992); ReMed Recovery Care Centers v. Twp. of Worcester, No. CIV. A. 98-1799, 1998 WL 437272, at *6 (E.D. Pa. July 30, 1998) Accordingly, the Court does not find these cases relevant to its analysis of Plaintiffs' reasonable accommodation claims.

time period of this dispute, it finds that Plaintiffs have failed to demonstrate any actions or statements that would rise to the level of showing that a zoning variance application would be demonstrably futile. Accordingly, the Court will deny Plaintiffs' motion for summary judgment as to their federal reasonable accommodation claims, and grant Defendant's cross-motion as to those same claims.

2. Plaintiffs' Remaining Claims

As described above, Plaintiffs have also brought a series of other claims. While Plaintiffs do not mention their § 1983 claim in their moving brief, they do argue that (1) Defendant violated the Due Process Clause of the Fourteenth Amendment by denying them the ability to live in the Serenity House "[s]olely because of . . . [their] disabled status," and (2) Defendant violated both the NJLAD and the NJCRA by failing to grant Plaintiffs a reasonable accommodation. (ECF No. 25-1 at 23, 24-26). Defendants again argue that each of these claims must be dismissed under the ripeness doctrine.

Unlike the Court's analysis of Plaintiffs' reasonable accommodation claims under federal statutory law above, the fact that Plaintiffs have not applied for a zoning variance is immaterial here; the doctrine approvingly described by the Third Circuit in Lapid-Laurel is limited to the context of those claims. Congregation Kollel, Inc., 2017 WL 637689 at *11.

Instead, Defendant argues that the remainder of Plaintiffs' claim are not ripe because "there has not been a 'final' determination regarding Serenity House's operation in the R-2 zone," since the City dismissed Plaintiffs' prior applications for a CLUC and their subsequent appeal due to the incomplete nature of their applications, and therefore has never issued a final decision on the merits. (ECF No. 26-1 at 36).

As an initial matter, the Court first finds *sua sponte* that regardless of whether Plaintiffs' NJLAD claim is ripe for adjudication at this stage, it must be remanded to the Superior Court for lack of jurisdiction. Plaintiffs specifically allege that Defendant violated N.J.S.A. § 10:5-12.5, which prohibits a "municipality, county or other local civil or political subdivision of the State of New Jersey, or an officer, employee, or agent thereof to exercise the power to regulate land use or housing in a matter that discriminates" on the basis of a disability. However, the provision also provides that "any person claiming to be aggrieved by an unlawful discrimination under this section shall enforce this section by private right of action in Superior Court." This Court has previously interpreted this provision to mean that New Jersey Superior Court has exclusive jurisdiction over claims of discrimination in land use policy by a municipality that arise under N.J.S.A. § 10:5-12.5, and therefore federal district courts lack subject

matter jurisdiction. Mount Holly Citizens in Action, Inc. v. Twp. of Mount Holly, No. 08-2584 (NLH), 2009 WL 3584894, at *7-8 (D.N.J. Oct. 23, 2009). See also Al Falah Center v. Township of Bridgewater, No. 11-2397 (MAS) (LHG), 2013 WL 12322637, at *18 (D.N.J. Sept. 30, 2013); In re Lapid Ventures, LLC, 2011 WL 2429314 at *6; Kessler Inst. for Rehab., Inc. v. Mayor & Council of Borough of Essex Fells, 876 F. Supp. 641, 664-65 (D.N.J. 1995). Accordingly, Plaintiffs' NJLAD claim must be remanded for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c) (requiring remand, not dismissal, if a court lacks jurisdiction over a claim removed from state court).

As to Plaintiffs' remaining claims, the Third Circuit has "consistently held that 'in § 1983 cases involving land-use decisions, a property owner does not have a ripe claim until the zoning authorities have had an opportunity to arrive at a final, definitive position regarding how they will apply the regulations at issue to the particular land in question." E & R Enterprise LLC v. City of Rehoboth Beach, Delaware, 650 F. App'x. 811, 813 (3d Cir. 2016) (quoting Lauderbaugh v. Hopewell Twp., 319 F.3d 568, 574 (3d Cir. 2003)). This rule similarly applies to substantive due process claims. Id. at 814. See also New Jersey Chinese Community Center v. Township of Warren, 712 F. App'x. 196, 199 (3d Cir. 2017) ("It is well established that, in cases involving land-use decisions, a property owner

does not have a ripe, constitutional claim until the zoning authorities have had an opportunity to arrive[] at a final, definitive position regarding how [they] will apply the regulations at issue to the particular land in question.") (quoting Sameric Corp. of Del., Inc. v. City of Phila., 142 F.3d 582, 597 (3d Cir. 1998)). Finally, the NJCRA, N.J.S.A. 10:6-1 et seq., was modeled after § 1983 and is interpreted analogously. See Owens v. Feigin, 947 A.2d 653 (N.J. 2008); Norman v. Haddon Township, No. 14-cv-06034-NLH-JS, 2017 WL 2812876, at *4 (D.N.J. 2017). Accordingly, ripeness concerns apply to each of Plaintiff's remaining claims.

The Court finds that Defendant is correct, and the City has not in fact issued a final, definitive decision that would render Plaintiffs' remaining claims ripe. The undisputed facts in the record demonstrate that after Hansen House purchased the Serenity House in March 2019, they were informed by the City that they were in violation of an ordinance requiring a certificate of occupancy prior to the establishment of a new occupation. Despite having received this notice two months earlier, Hansen House proceeded to relocate residents from a separate home to the Serenity House in late May 2019 without having ever applied for an occupancy permit. It was not until almost two months after that, in July, that Hansen House first

asserted to the City their argument that they were a single family home, or first submitted an application for a CLUC.[3]

According to the City, Serenity House's CLUC application was denied based on their failure to include multiple forms of information required by § 163-211 of the City Code. The denied application form provided by the City listed multiple procedural requirements for the CLUC form that had not been fulfilled; it also included a note referencing that Serenity House was likely in violation of § 152-1's distance requirement. Based on this note, and the vacate order sent by Dale Finch, which also referenced the distance requirement, Plaintiffs argue that their application was denied on this ground. The parties' briefs and statements of fact dispute at length the exact basis on which the CLUC application was denied. As explained, Plaintiffs argue that it was denied due to § 152-1's distance requirement; Defendant argues that it was denied based only on Hansen House's failure to submit a number of documents and pieces of information required by the City Code.

[3] The Court notes that Plaintiffs dispute whether a CLUC is required for their certificate of occupancy. Their argument appears to be that because Serenity House should be classified as a single family home, it does not require a CLUC before it can receive a certificate of occupancy. The Court takes no position on this argument, besides to state that the resolution of this question again appears to be reliant on the City's determination as to what form of housing Serenity House qualifies as under the City Code.

However, the Court finds that it is immaterial to the question before it which party is correct. The central question regarding the ripeness of Plaintiffs' claims is whether a final, definitive determination was ever made by the City. Adopting Defendant's view, the City has in fact never issued any opinion on the merits of the CLUC application, and the only claim regarding Serenity House's potential status as a "community residence" governed by the distance requirement of § 152-1 was made by an individual who is not involved in the process of assessing CLUC applications; accordingly, no definitive decision could have been reached. However, even viewing the facts in the light most favorable to the Plaintiffs as the party opposing summary judgment on ripeness grounds, and accepting their claim that their CLUC application was denied based on § 152-1's distance requirement, it is still clear that no final, definitive decision regarding the proper application of Atlantic City's zoning ordinances to Serenity House has ever been made.

After the CLUC application was denied, and the parties met to discuss the denial on August 16, Hansen House filed an appeal and request for interpretation with the Zoning Board on August 30, which they later supplemented with revised arguments a few days later. However, this appeal and request for interpretation, and its arguments that Serenity House should be allowed to operate as a single family home permitted in the R-2

District, was never reviewed on the merits by the Zoning Board. As Defendants note, and Plaintiffs do not appear to dispute, the Zoning Board's September 24 letter informed Hansen House, according to the letter for the second time, that their appeal was procedurally deficient due to Hansen House's failure to pay the filing fee, or attach multiple documents related to the ownership of the house as required under New Jersey law and the City Code. The letter further explicitly stated that "the City lacks sufficient information to characterize the use of the property *and takes no position on same*." (ECF No. 1-1, Compl. Ex. N).

Based on these facts, it is clear to the Court that Atlantic City's zoning authorities have not had the "opportunity to arrive[] at a final, definitive position regarding how [they] will apply the regulations at issue to the particular land in question" necessary for Plaintiffs' claims to have become ripe. New Jersey Chinese Community Center, 712 F. App'x. at 199 (quoting Sameric, 142 F.3d at 597). As the Third Circuit has repeatedly made clear, it is not the place of federal courts to involve themselves in local zoning issues prior to local zoning authorities having issued a final determination.

It is worth nothing that Plaintiffs do not appear to dispute the fact that the Zoning Board has never issued a final decision regarding the proper application of the City's zoning

regulations to the Serenity House — in their reply brief, Plaintiffs focus their entire rebuttal on the argument that they are not required to have waited until a final decision was issued, as any further involvement with the City and the Zoning Board's process would have been futile. However, as the Court explained above, Plaintiff has failed to provide sufficient evidence to demonstrate that the City's proscribed process for handling zoning disputes is so demonstrably futile as to render their claims ripe for adjudication by this Court.[4]

Finally, the Court notes that the parties continue to dispute, at length, exactly what position Plaintiffs took

[4] The Court recognizes that, as the Zoning Board noted in its denial of Plaintiffs' appeal, the twenty-day period in which such appeals were permitted under N.J.S.A. 40:55D-72a has long since expired. The parties here have not briefed or explained what impact this may have on future CLUC applications that Plaintiffs may submit, or what the next approved step would be under the City Code. Based on Defendant's repeated argument that Plaintiffs should pursue a zoning variance, the Court assumes that Plaintiffs continue to have available avenues for receiving approval for Serenity House to operate in the manner they desire. However, even if Plaintiffs were in fact unable to further pursue a CLUC application or further appeals, the fact that their claims may not be "simply 'premature,' but rather never will ripen, does not affect the disposition of this case on the basis of the finality rule." New Jersey Chinese Community Center, 712 F. App'x. at 199 n.5. (quoting Taylor Inv., Ltd v. Upper Darby Twp., 983 F.2d 1285, 121287 (3d Cir. 1993)). See also Sameric, 142 F.3d at 598 (noting that the Third Circuit was affirming, based on the finality rule, the grant of summary judgment on a claim alleging the City improperly denied a demolition permit, despite plaintiff ensuring its claim never could be ripe because it abandoned its appeal from the initial denial of the permit after plaintiff sold the property).

regarding Serenity House's proper classification at different points in both the underlying dispute, and in the present litigation. Defendant argues that Plaintiffs' position and claims have shifted multiple times in an attempt to gain an advantage. Plaintiffs argue that they have maintained consistently that they are a single family home, have only tried to gain approval as other forms of housing in an attempt to reach an amicable compromise and resolution of the dispute, and that Defendant is the party being inconsistent about the definitions of different forms of housing under the City Code. Given the Court's findings regarding the ripeness of many of Plaintiffs' claims, the Court finds that this disagreement is also immaterial to the case before it. With no final, definitive position having ever been taken by the City or its Zoning Board, bodies with considerably more experience and expertise in the application of their own zoning ordinances, the Court will not attempt to discern exactly what form of housing Serenity House should be considered; nor does it view the parties' disagreement as to which positions they have taken at different points in this dispute as relevant to its finding that Plaintiffs' claims are not ripe.

Accordingly, Plaintiffs' motion for summary judgment as to their § 1983, Fourteenth Amendment, and NJCRA claims will be

denied, and Defendant's cross-motion regarding those claims will be granted.

Conclusion

For the reasons expressed above, both Plaintiffs' motion for summary judgment (ECF No. 25) and Defendant's cross-motion for summary judgment (ECF No. 26) will be granted in part and denied in part. The Court will issue an Order enjoining Defendant from enforcing the distance requirement of § 152-1, and will remand Plaintiffs' remaining claim under the NJLAD to the New Jersey Superior Court.

An appropriate Order will be entered.

Date: December 3, 2020
At Camden, New Jersey

/s Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.